



:Darrell-James: Hill, -:Ohionan, Procurator;
:Beverly-Jean: Romero- Hill, -New-Mexican
PO Box 3806
Apache Junction, Arizona [85117]

:notice: Procurator -Proof-of-notice-
7009 1410 0000 7868 5802 -

:Executor: PE-2017-A.D. - Nonconsent
to :DOI-1776-A.D- deprivation of -:unalienable-
rights upon the man- Ohioan and New-Mexican
by the Executor- Procurator

Related wholly to: Gila-County-Recorder-Doc.#: 2005-022460; 2006-008777;
2007-007742; 2007-007743; 2017-002378; 2017-006522; 2018-005176; 2019-
009291; 2019-011722.

See: the appended: Claim: **7009 1410 0000 7868 5802**, :Procurator-Order:
7009 1410 0000 7868 5802 -document -disposed on -December 1st, 2021.
A.D., :12: 59 p.m. to the USPO by the first-class- CMN 7009 1410-0000-7868-
5802 -mail for the assigned-delivery.

:i- man affirm the above-said is true and correct to the best of my ability, will state
same in the open-court.

Without prejudice,

December 2nd, 2021 A.D.


Darrell-James Hill, -:Executor

:Darrell-James: Hill, -Ohioan, -Executor;
Executor- Procurator for -Hill- Executors
Darrell-James: Hill, -Ohioan, and:
Beverly-Jean: Romero- Hill, -:New-Mexican

:Darrell-James: Hill, -:Ohioan¹- beneficiary-civilian,

- :Executor: DOI-1776-A.D.²- :PE-2016-A.D.- covenant³,
- :Executor- Procurator: EBA-1933-A.D.-covenant⁴, acting-officer,
- :Executor- Procurator: Ingold-Pinal-2017-A.D.- covenant⁵;
- :Ambassador: Concession-1213-A.D.-covenant⁶

:Beverly-Jean: Romero- Hill, -:New-Mexican⁷-beneficiary-civilian,

- :Executor: DOI-1776-A.D.- :PE-2016-A.D.- covenant⁸,
- :Executor: EBA-1933-A.D.-covenant,
- :Executor: Ingold-Pinal-2017-A.D.-covenant.

PO Box 3806, Apache Junction, Arizona [85117]

Arizona State
Pinal County

PE-2017-A.D. -:Non-consent to -:DOI-1776-A.D.- deprivations-of-unalienable-rights by the

- 1 **:Darrell-James: Hill, -:Ohioan means:** Ohio-State-Countryman-Sovereign, -:Darrell-James: Hill, -:Ohioan-©-1958-A.D.-birth-right-created by the Almighty-God -where -nothing -stands between the Almighty-God and :-i- man. :Darrell-James: Hill, -:Ohioan-beneficiary, -:Executor means: See: historical-documents: Superior Constructive Notice and Demand: Permanent Non-Commerical Presumption, and: Constructive Notice : 'DARRELL JAMES HILL' of 'Darrell-James: of the family Hill', authorized Representative. -:Gila-county-Arizona-Doc.#: 2017-002378; pp. 1-24, 93-95.
See: **Proof-of-Claim – A.:** Ohio-state-Constitution The 1851 Constitution with Amendments to 2017, - appended.
- 2 **:DOI-1776-A.D means:** Declaration-of-Independence, 1776. See: **Proof-of-Claim – B.:** The -Declaration of independence, July 4, 1776, p 1; The -Articles of Confederation July 9, 1778, p 4; The -Constitution for the United States of America September 12, 1787, p 10; The -first 12 Amendments to the Constitution, 1789 – 1804 – ratified. P 21; The -13th Amendments to the Constitution, 1809; -Chap. XX-- An Act to establish the Judicial Courts of the United States – 1 stat. 73; Chap. XXII-- An Act to regulate the collection of duties on imports and tonnage – 1 Stat. 627; The Emancipation Proclamation – January 1, 1863; General Orders No. 100: The Lieber Code – 24 April 1763; Criminal code, – 35 Stat. 1088.; The Law of Land Warfare: Areas To Be Protected; Sec 46. Such Buildings to Display Sign Specified in Naval Treaty: 21 ; Art: -H. IX, art 5, 2d par.- Field Manual 27-10, Department of the Army: July 1956; appended.
- 3 **:PE-2016-A.D.- :Darrell-James: Hill means:** Ibid. 1
- 4 **:EBA-1933-A.D. means:** Emergency-Banking-Act, 1933. See: **Proof-of-Claim – C:** Documents and Statements Pertaining the the Banking Emergency; Presidential Proclamations, Federal Legislation, executive Orders, Regulations, and other documents and Official Statements; Part I, February 25 – March 31, 1933; An Act To enact the Uniform commercial Code for the District of Columbia, and for other purposes. – 77 Stat. 630; D&B D-U-N-S® Numbers – November-2021-A.D.: Gov. of the United States, State of Arizona, County of Pinal, etc.; Article 100 – Cestui Que Vie Trust – Roman Canon Law 3.3 – Canon 2036-2057 – Rights Suspension AND Corruption; appended.
- 5 **:Ingold-Pinal-2017-A.D. means:** USPO RMN RE 322 399 225 US ; See: Gila-County-Arizona-Recorder-Doc.#2019-0011722, pp. 9-13, 54-55, 184-185. See: **Proof-of-Claim – D.:** Document: 3 day- Notice:
Re: Pinal-County-Arizona-Trustees c/o the man- Jay-Roy: Ingold,
-:Indianan- Executor, -:Postmaster for the delivery of the:
:Notice: Hill-Executores-Procurator- Jurisdiction, et al.-
:Render Pinal-county-Bill-Remedy,
:Stephen-Q, -Pinal-county-Arizona-state-Trustee, :USPO RMN RE 322 398 361 US, appended; ,
19 pages –
Re: Setting of the Presumption of the Hill-Executors' jurisdiction
Setting of the Procurator of the Hill-Executors over the Pinal-county-Arizona-Trustee
Render: the Pinal- county-Arizona-state-Trustee- Dereliction Bill of the Particulars for the remedy by the law of the PE-2016-A.D.-covenant; See: Proof of-Claim: A) :2017-Ingold-Pinal-county- RE 322 399 225 US- covenant -Bill-of-Particulars, et seq. –
Demand for the Payment-due-Now! , appended.
- 6 **:Concession-1213-A.D.-covenant means:** See: **Proof-of-Claim – E.:** Concession of 1213: John, by the grace of God, king of England, lord or Ireland, duke of Normandy and Aquitaine, count of Anjou, to all the faithful of Christ who shall look upon this pre. sent charter, greeting ... etc., -appended.
- 7 **:Beverly-Jean: Romero- Hill, -:New-Mexican means:** New-Mexico- State- Countryman- sovereign, -:Beverly-Jean: Romero- Hill, -:New-Mexican-©-1958-A.D.-birth-right-given by the Almighty-God -where -nothing -stands between the Almighty-God and :-i- man. :Beverly-Jean: Romero- Hill, -:New-Mexican-beneficiary, -:Executor -:PE-2016-A.D. means: See: historical-documents: Superior Constructive Notice and Demand: Permanent Non-Commerical Presumption, and: Constructive Notice : 'BEVERLY JEAN ROMERO- HILL' of 'Beverly-Jean; of the family Romero- Hill', authorized Representative. -:Gila-county-Arizona-Doc.#: 2017-002378; pp. 1-4, 26-44, 93-95.
See: **Proof-of-Claim – F.:** New-Mexico-State-Constitution, -appended.
- 8 **:PE-2016-A.D.- :Beverly-Jean: Romero- Hill means:** Ibid. 7.

:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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man- Pinal-County-Arizona-State-Office-Trustee-Dereliction of -:Loyalty-Oath-of-Office;
 :Hill- Executors⁹- Procurator: Ingold-Pinal-2017-Covenant;
 :Executor- Procurator: Darrell-James: Hill, -:Ohioan- beneficiary
 ~See: Day- 3- Notice to the man-Stephen-Q.: Miller: USPO RMN RE 322 298 361 US¹⁰~

:Mark: Lamb, -:Pinal-County-Arizona-State-Sheriff, -:Trustee
 971 Jason Lopez Circle, Building C
 Florence, Arizona [85132] USPO CMN 7009 1410 0000 7868 5802

Greetings :Mark:, -:Sheriff -:Lamb:

:Loyalty-Oaths of -:Office¹¹

1~ All of the members of the Pinal-County-Arizona-State-Office-Trustees¹² swore under the oath-of-office¹³ with the duties to the common-people for the protection of the DOI-1776-A.D., AOC-1778-A.D. and CftUSofA-1787-A.D. for the protection of our life, liberty and property against all enemies, foreign or domestic.

Acceptance of the :Pinal-County-Arizona-State-Office-Trustee- :Oaths of Office

2~ :We -Darrell-James and Beverly-Jean, -:Hill- Executors- Procurators accept your, et al. oaths of office.

PE-2016-A.D.- Covenant- Agreement

3~ :You have been notified¹⁴ of the wrong-doings-continuing unto now over the last 4 years of the victimization: of -:stalking at the home-area, forced-response to the color-of-law- legalism, use of the color-of-law to impose-fines and, presumably, use of the color-of-law- apparatus for the theft of the beneficiary-trust-fund- assets by the use of the court-system and the abuse of the bond-system. -

9 :Hill- Executors means: :We-the- :Hill-Executors -people of the united-States-of-America-1776-A.D. ~uSOAA- 1776-A.D.-, are with the divine-appointment in the overstanding of the Declaration-of-Independence- 1776-A.D. ~DOI-1776-A.D.-, et seq. -:law of the nation- covenant with the Almighty-God- Grantor, -:Creator of the heavens, waters and lands-given to :I- man- Hill-Executors who are made in the image of the God-Grantor and given the dominion over the earth with the man -Trustee-charge by the Almighty-God-Creator and covenantor of the DOI-1776-A.D., See: King-James-Version: Holy-Bible- Book: Genesis, Chap.1: v. 1 -28, and following

10 :Day- 3- Notice to the man-Stephen-Q.: Miller: USPO RMN RE 322 298 361 US means: Ibid 5.

11 :oath-of-office means: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of according to the the best of my ability, so help me God (or so I do affirm). See: court-rules-agreement for the Ingold-Pinal-2017-A.D. - covenant.

12 :Pinal-County-Arizona-State-Office-Trustees who have sworn to the oath means:

See: Proof-of-Claim - G.:

a) :ARS Title 38-233: Filing oaths of record:

b) :Pinal-County-Arizona-State-Office- Trustee-Loyalty-Oaths:

Babeu, :Cavanaugh, :Georgini, :Goodman, :Goodman, :House, :Lamb, :McCarville, :McCord, :McClure, :Miller, :Rios, :Riuz, :Ross, :Serdy, :Smith, :Volkmer, :Wolf;

c) :Arizona-State-Constitution

d) :Arizona-Revised-Statute- proofs: ARS Title 1 - General Provisions; ARS Title 41 - State Government provisions; ARS Title 11 - Counties provisions; ARS Title 47 - Uniform commercial code provision;

13 :swore to the oath-of-office means: decreed-knowingly, voluntarily and intentionally to the obligation with the fervent-fidelity to the performance of the duties of the office as a precondition and requirement for the fidelity-acceptation of the duty of the office-obtained. Thereto, the non-performance in that office without the regard for the oath-taken is with the dishonor, and monies received for the dishonor is with the theft and unlawful emolument.

14 :You have been notified means: See: Gila-County-Arizona-Recorder- Doc.#2019-0011722, pp. 128-130, 137, 134; pages out of order. See: Proof-of-Claim - H.: See: Constructive Notice Of The Setting Of The Setting Of The Presumptions ~Initially: USPO CMN 7018 0360 0000 6959 2963 ~ -Presumption Set: USPO RMN RE 322 404 036 US - entry to Case No. CV 20181825- Oldham: court-rules-agreement for the Ingold-Pinal-2017-A.D. - covenant; appended.

:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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4~ :This is a sickening, coordinated injury and abuse with the obstruction-of-justice¹⁵, misprision-of-felony¹⁶, theft, and harassments are with the clear-written-goals in the documents for to evasion of the -:DOI-1776-A.D. and operation- outside of the limits of the CftUSofA-1776-A.D. and Bill-of-Rights-1789-A.D.-derived-authority-restrictions with the use of the color-of-law-prosecution and summary-conviction that requires you, -:Mark -the-Sheriff, who is sworn to uphold and defend the CftUSofA-1776-A.D. and Bill-of-Rights-1789-A.D., to violate your oath, compromise the trust, and aid and corroborate direct violations against the DOI-1776-A.D. and CftUSofA-1787 in the direct-dereliction of your Pinal-County-Arizona-State-Office- Trustee -:Loyalty-Oath-of-Office.

:Non-consent to the DOI-1776-A.D.- deprivations-of-unalienable-rights under the forced-imposition by the color-of-law

5~ :We-the-people, :Hill-Executors, -Procurators: Ingold-Pinal-2017-A.D.- covenant have-Not and do -Not-consent to the color-of-law-violations- imposed by the man-Pinal-County-Arizona-State-Office-Trustee- Dereliction with the deprivation of the unalienable-DOI-1776-A.D.-rights - declared since at the beginning of the victimization in the accordance with the Ingold-Pinal-2017-A.D.-deprivation-damages-covenant-agreement by the law of the DOI-1776-A.D.-PE-2016-A.D.-covenant.

Hill-Executors- Injury

6~ For :i- man and wife's -awareness of these abusive-processes is the -:reason-why for the establishment of the PE-2016-A.D.-covenant with the man-Oath-takers of the Arizona-counties, Arizona-State and the -:Government for the United-States-of-America-1787 -people, but the thieving did not allay and today has-not ceased but has only increased!

Hill-Executors- Procuration: Ingold-Pinal-2017-A.D.- Covenant

7~ With the injuries and continuing-damage-duration of the 2017-A.D. to 2021-A.D.- now upon the i- man- Darrell-James: Hill - Ohioan -beneficiary -:Executor and wife- Beverly-Jean: Romero- Hill -New-Mexican -beneficiary -:Executor, -:Hill-Executors~ - Procurators is with the overstanding the man-Pinal-County-Arizona-State-Office-Trustee-Dereliction- matter with the law of the Ingold-Pinal-2017-A.D.- covenant by the law of the DOI-1776-A.D.- PE-2016-A.D.-covenant.

8~ In the accordance with the PE-2016-A.D.-now we are with the procuration over the Hill-Executors- remedy- making-whole- ministraton of the DOI-1776-A.D.- deprivation-of-rights- penalty-agreement-matters within the Ingold-Pinal-2017-A.D.-covenant by the law of the PE-2016-A.D.- DOI-1776-A.D.- covenant.

:Procuration-set is by the Covenant- Agreement and Notice:

9~ USPO RMN RE 322 398 261 US – Stephen-Q. and: Miller, USPO RMN 322 398 327 US – Mark: Lamb. See: Proof-of-Claim – E., -appended.

10~ :This- penalty-obligation-matter is not discretionary or arbitrary but is the agreed-upon-remedy-established in the PE-2016-A.D. and Ingold-Pinal-2017-A.D.- covenant-agreements with the Hill-Executors'- Executor-Procuration- :Darrell-James: Hill, -:Ohioan-Executor -overstanding- now of the Pinal-County-Arizona-State-Office-Trustee-Dereliction unto the remedy- making-whole unto the Hill-Executors is completed in this matter in the accordance with the Ingold-Pinal-2017-A.D.- covenant by the law of the PE-2016-A.D.- covenant.

:Procuration-Orders: 7009 1410 0000 7868 5802:

15 :Obstruction-of-justice means:

For the 2017-A.D.- matter of the man-Pinal-County-Arizona-State-Office-Trustee-Dereliction with the Ingold-Pinal-2017-A.D.-covenant- agreement is with the Pinal-County-Arizona-State-Office-Trustee-tacit-agreement of the covenant, and with the continued-damage upon the Hill-Executors'- DOI-1776-A.D.-rights in the accordance with the law of the Ingold-Pinal-2017-A.D.- covenant-agreement by the law of the DOI-1776-A.D.-PE-2016-A.D.-covenant; and,

For the 2021-A.D.-now -case-matter with the after- over-four-years of the continuing-damages upon the Hill-Executors with the DOI-1776-A.D.- deprivation of the rights under the color-of-law is with the lawful-remedy of the Ingold-Pinal-2017-A.D.- covenant- agreement-now with the Hill- Executors- Procuration overstanding the Pinal-County-Arizona-State-Office-Trustee-Dereliction with the Ingold-Pinal-2017-A.D.- covenant for the resolve of the matter by the law of the DOI-1776-A.D.- PE-2016-A.D.-covenant.

16 :Misprision-of-felony means: :Misprision-of-Felony -Trustee- Wrong-Doing with harms upon the Hill-beneficiary

:you- man- Mark have been severally-notified of the man-Pinal-County-Arizona-State-Office-Trustee-derelictions with the history of the damages upon the Hill-Executors with the man-PINAL/Pinal-County-Arizona-State-Office-Trustees -acting in the nature of the Criminal Code sec. 19, 20, 21, -in the nature of the 18 U.S.C. 241 and 242- and other aided- felony-violations for the unlawful-deprivation of the the Hill-Executors of the DOI-1776-A.D.-rights by the color-of-law;

:you- man with the knowing of these felonious-wrong-doings with the Not- pro-Oath- active- stopping of the wrong-doings and referring them to the proper-authorities unto the eradication of these wrong-doings is with the evidence of the potential-aiding or abetting of the obstruction-of-justice and misprision-of-felony and other-damages-imposed with the color-of-law by the abandonment of the Oath-of-Office.

:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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11~ a) :No-lawful-warrant-issue may-issue or be-sustained againstst the Hill-Executors in the any-matter of the 5124 East 18th Avenue, Apache-Junction-Arizona-State- home-site without the express-written-consent by the i- man-Darrell-James: Hill, -Executor-Procurator.
 12~ b) :No-lawful-warrant -may-issue for the taking of the any-property on the Arizona-State-country-land of the dwelling of the man-Ohioan-Executor-civilian and wife-New-Mexican-Executor-civilian in the accordance with the DOI-1776-A.D., et seq.- Lieber-Code by the Executor-Procurator- Darrell-James: Hill: Ingold-Pinal-2017-A.D.- covenant by the law of the DOI-1776-A.D.- PE-2016-A.D.-covenant;
 13~ c) :No-further sustained or newly-contrived-harm may be imposed-upon the beneficiary-Hill-Executors- man-kind -habitators on the Arizona-State-land: 5124 East 18 Avenue, -:Apache - Junction of the Arizona-state -land- location by the law of the DOI-1776-A.D. -PE-2016-A.D.- covenant;
 14~ d) :Every- Pinal-County-Arizona-State-Office-Trustee-assistance and cooperation with the resolve of the matter in the favor of the beneficiary-Hill- Executors is-now demanded with the must-resolve of this DOI-1776-A.D.- deprivation-of-unalienable-rights-matter in this penalty-phase with the assurance and ensurance of the Hill- Executors- Procurators - every -beneficiary- advantage with the safety in the accordance with the law of the Ingold- Pinal-2017-A.D.- covenant by the law of the PE-2016-A.D.- DOI-1776-A.D.- covenant.

:Non-consent to the DOI-1776-A.D.- deprivations-of-unalienable-rights under the forced-imposition by the color-of-law

15~ :We-the-people, :Hill-Executors, -Procurators: Ingold-Pinal-2017-A.D.- covenant have-Not and do -Not-consent to the color-of-law-violations- imposed by the man-Pinal-County-Arizona-State-Office-Trustee- Dereliction with the deprivation of the unalienable-DOI-1776-A.D.-rights - declared since at the beginning of the victimization in the accordance with the Ingold-Pinal-2017-A.D.-deprivation-damages-covenant-agreement by the law of the DOI-1776-A.D. -PE-2016-A.D.- covenant.

:i- man verify that the above is true and correct to the best -ability, and will state-same in the open-court.

Without prejudice

Darrell James Hill, Executor
 :Darrell-James: Hill, -Executor- Procurator

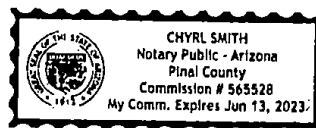
Beverly Jean Romero Hill, Executor
 :Beverly-Jean: Romero: Hill, -:Executor -in -procuration

Jurat

Verified and autographed before me the 1st December day, November 2021 A.D.
 Type of Identification: Arizona Driver License

Cheryl Smith
 Notary-Public

SEAL



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802



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ITEM NAME	QTY	PRICE	TOTAL
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	1 @	\$10.00	
Tax			\$0.00
8.5x14 Copies			\$0.33
	3 @	\$0.11	
Tax			\$0.03
Subtotal			\$10.33
Shipping/Other Charges			\$0.00
Total tax			\$0.03
Total			\$10.36
Cash			\$50.00
Change back (Cash)			(\$39.64)

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Certified Mail®			\$3.75
Tracking #:			
70091410000078685802			
Return Receipt			\$3.05
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City, State, ZIP+4 Florence, Arizona 85132-7
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:Proof-of-Claims: Cover-Sheet

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Proof-of-Claim – A. 1 / 1 :Ohio-state-Constitution The 1851 Constitution with Amendments to 2017

Proof-of-Claim – B. 1 / 8 The -:Declaration of independence, July 4, 1776, p 1;

The -:Articles of Confederation July 9, 1778. p 4;

The -:Constitution for the United States of America September 12, 1787. p 10;

The -:first 12 Amendments to the Constitution, 1789 – 1804 – ratified. P 21;

Proof-of-Claim – B. 2 / 8 The -:13th Amendments to the Constitution, 1809;

Proof-of-Claim – B. 3 / 8 Chap. XX.-- An Act to establish the Judicial Courts of the United States

1 stat. 73.
Statute I.
Sept. 24, 1789

Proof-of-Claim – B. 4 / 8 Chap. XXII.-- An Act to regulate the collection of duties on imports and tonnage.

1 Stat. 627
Statute III.
March 2, 1799.

Proof-of-Claim – B. 5 / 8 The Emancipation Proclamation.

January 1, 1863.
A transcription
by the President of the United States of America: Abraham Lincoln

Proof-of-Claim – B. 6 / 8 General Orders No. 100: The Lieber Code

Instruction for the Government of the Armies of the United States in the Field
promulgated by President-Abraham-Lincoln, 24 April 1763

Proof-of-Claim – B. 7 / 8 Criminal code.

35 Stat. 1088.
March 4, 1909.

:Procurator-Order: No further harm upon the man--Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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:Proof-of-Claims: Cover-Sheet

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Proof-of-Claim – B. 8 / 8 The Law of Land Warfare: pp. Cover: 1 ; Sec. 45. Building and Areas To Be Protected; Sec 46. Such Buildings to Display Sign Specified in Naval Treaty: 21 ; Art: ~H. IX, art 5, 2d par.~
Field Manual 27-10
Department of the Army
Washington 25, District of Columbia, 18 July 1956

Proof-of-Claim – C. 1 / 4 Documents and Statements Pertaining the the Banking Emergency;
Presidential Proclamations, Federal Legislation, executive
Orders, Regulations, and other documents and Official
Statements;
Part I, February 25 – March 31, 1933.

Proof-of-Claim – C. 2 / 4 Article 100 – Cestui Que Vie Trust
Roman Canon Law 3.3
Canon 2036- 2057
Rights Suspension AND Corruption
Source:
http://one-heaven.org/canons/positive_law/article/100.html

Proof-of-Claim – C. 3 / 4 An Act To enact the Uniform commercial Code for the District of Columbia, and for other purposes.
77 Stat. 630
Public Law 88-243
December 30, 1963.

Proof-of-Claim – C. 4 / 4 D&B D-U-N-S® Numbers
us dofta
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:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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:Proof-of-Claims: Cover-Sheet

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Proof-of-Claim – D. 1 / 1 Document: 3 day- Notice:

**Re: Pinal-County-Arizona _Trustees c/o the man- Jay-Roy-Ingold,
-:Indianan- Executor, -:Postmaster for the delivery of the:
:Notice: Hill-Executores-Procurator- Jurisdiction, et
al.- :Render-Pinal- county-Bill-Remedy,
:Sephen-Q, -Pinal-county-Arizona-state-Trustee, :USPO RMNI
RE 322 398 361 US, appended: , 19 pages –**

**Re: Setting fo the Presumption of the Hill-Executors' jurisdiction
Setting of the Procuration fo the Hill-Executors over the Pinal-
county- Arizona-Trustee
Render: the Pinal- county-Arizona-state-Trustee- Dereliction
Bill of the Particulars for the remedy by the law of the PE-
2016-A.D.- covenant; See: Proof of-Claim: A) :2017-Ingold-
Pinal-county- RE 322 399 225 US- covenant -Bill-of-
Particulars, et seq. –
Demand for the Payment-due-Now!**

Proof-of-Claim – E. 1 / 1 :Concession of 1213:

**John, by the grace of God, king of England, lord or Ireland,
duke of Normandy and Aquitaine, count of Anjou, to all the
faithful of Christ who shall look upon this pre, sent charter,
greeting.**

Proof-of-Claim – F. 1 / 1 :New-Mexico-state-Constitution

Proof-of-Claim – G. 1 / 7 Arizona-State-Constitution

Proof-of-Claim – G. 2 / 7 :ARS Title 38-233: Filing oaths of record

Proof-of-Claim – G. 3 / 7 :Pinal-County-Arizona-State-Office- Trustee-Loyalty-Oaths

:Babeu: :Paul-R.: Babeu: 12-23-2008, 12-31-2012.

:Cavanaugh :Kevin: Cavanaugh: Record-date: 12-21-2020.

:Georgini :Joseph-R.: Georgini: 12-19-2008.

:Goodman :Mike: Goodman: 12-12-16, 12-21-2020.

:House :Todd: House: 12-12-2016.

:House :Todd-H.: House: 12-14-2012.

:Lamb :Mark: Lamb: 12-12-2016, 12-21-2020.

:McCarville :Stephen: McCarville: 01-04-2005.

:McCarville :Stephen-F.: McCarville: 01-06-2009.

:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

Procurator-Order: 7009 1410 0000 7868 5802

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:Proof-of-Claims: Cover-Sheet

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:McCord	:Michael: McCord: 12-12-2016, 12-21-2020.
:McClure	:Jeffrey: McClure: 12-21-2020.
:Miller	:Stephen-Q: Miller: 12-04-12, 12-08-2016, 12-21-2020.
:Rios	:Pete: Rios: 01-05-2009, 01-02-2013, 12-14-2016.
:Riuz	:Lionel-D.: Ruiz: 01-03-2005,
:Ross	:Virginia: Ross: 12-18-2012, 12-05-2016, 12-15-2020.
:Serdy	:Jeff: Serdy: 12-21-2020.
:Smith	:Anthony: Smith: 12-05-2012, 12-12-2016.
:Volkmer	:Kent: Volkmer: 12-12-2016, 12-21-2020.
:Wolf	:Douglas: Wolf: 12-12-2016, 12-21-2020.
:Wolf	:Douglas-T.: Wolf: 12-03-2012,

Proof-of-Claim – G. 4 / 7 **:Arizona-Revised-Statute- proofs:**
ARS Title 1 – General Provisions

Proof-of-Claim – G. 5 / 7 **:Arizona-Revised-Statute- proofs:**
ARS Title 41 – State Government provisions

Proof-of-Claim – G. 6 / 7 **:Arizona-Revised-Statute- proofs:**
ARS Title 11 – Counties provisions

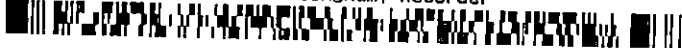
Proof-of-Claim – G. 7 / 7 **:Arizona-Revised-Statute- proofs:**
ARS Title 47 – Uniform commercial code provision

Proof-of-Claim – H. 1 / 1 **Constructive Notice Of The Setting Of The Setting Of The**
Presumptions ~Initially: USPO CMN 7018 0360 0000 6959 2963
~ Presumption Set: USPO RMN RE 322 404 036 US – entry to
Case No. CV 20181825- Oldham: court-rules-agreement for the
Ingold-Pinal-2017-A.D. - covenant

Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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Proof-of-Claim – A. 1 /1

**:Ohio-state-Constitution The 1851 Constitution with
Amendments to 2017**

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12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

:Ohio-state-Constitution¹

Preamble We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

Article I: Bill of Rights

§ 01 Inalienable Rights (1851) Inalienable rights.

§1 All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

(1851)

§ 02 Right to alter, reform, or abolish government, and repeal special privileges (1851)

Right to alter, reform, or abolish government, and repeal special privileges.

§2 All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

(1851)

§ 03 Right to assemble (1851)

Right to assemble.

§3 The people have the right to assemble together, in a peaceable manner, to consult for the common good; to instruct their Representatives; and to petition the General Assembly for the redress of grievances.

(1851)

§ 04 Bearing arms; standing armies; military

Bearing arms; standing armies; military power.

§4 The people have the right to bear arms for their defense and

¹Ohio Constitution means: November 20, 2021- A.D. -<https://www.legislature.ohio.gov/laws/ohio-constitution> ~



powers (1851)	security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power. (1851)
§ 05 Trial by jury (1851, amended 1912)	Trial by jury. §5 The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury. (1851, am. 1912)
§ 06 Slavery and involuntary servitude (1851)	Slavery and involuntary servitude. §6 There shall be no slavery in this State; nor involuntary servitude, unless for the punishment of crime. (1851)
§ 07 Rights of conscience; education; the necessity of religion and knowledge (1851)	Rights of conscience; education; the necessity of religion and knowledge. §7 All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction. (1851)
§ 08 Writ of habeas corpus (1851)	Writ of habeas corpus. §8 The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the



public safety require it.

(1851)

§ 09 Bail; cruel and unusual punishments

Bail.

§9 All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great and except for a person who is charged with a felony where the proof is evident or the presumption great and who where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail.

Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community.

Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the State of Ohio.

(1851, am. 1997)

§ 10 Trial for crimes; witness (1851; amended 1912)

Trial for crimes; witness.

§10 Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation



against him, and to have a copy thereof; to meet witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

(1851, am. 1912)

§ 10a Rights of victims of crime

Rights of victims of crimes.

§10a (A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused:

- (1) to be treated with fairness and respect for the victim's safety, dignity and privacy;
- (2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings;
- (3) to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated;
- (4) to reasonable protection from the accused or any person acting on behalf of the accused;
- (5) upon request, to reasonable notice of any release or escape of the accused;
- (6) except as authorized by section 10 of Article I of this constitution, to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of



the accused;

(7) to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim;

(8) to proceedings free from unreasonable delay and a prompt conclusion of the case;

(9) upon request, to confer with the attorney for the government; and

(10) to be informed, in writing, of all rights enumerated in this section.

(B) The victim, the attorney for the government upon request of the victim, or the victim's other lawful representative, in any proceeding involving the criminal offense or delinquent act against the victim or in which the victim's rights are implicated, may assert the rights enumerated in this section and any other right afforded to the victim by law. If the relief sought is denied, the victim or the victim's lawful representative may petition the court of appeals for the applicable district, which shall promptly consider and decide the petition.

(C) This section does not create any cause of action for damages or compensation against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

D) As used in this section, "victim" means a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

(E) All provisions of this section shall be self-executing and severable, and shall supersede all conflicting state laws.

(F) This section shall take effect ninety days after the election at which it was approved.

(1994, am. 2017)

§ 11 Freedom of speech; of the press; of libels (1851)

Freedom of speech; of the press; of libels.

§11 Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the



right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

(1851)

**§ 12
Transportation,
etc. for crime
(1851)**

Transportation; etc. for crime.

§12 No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

(1851)

**§ 13 Quartering
troops (1851)**

Quartering troops.

§13 No soldier shall, in time of peace, be quartered in any house, without the

consent of the owner; nor, in time of war, except in the manner prescribed by law.

(1851)

**§ 14 Search
warrants and
general warrants
(1851)**

Search warrants and general warrants.

§14 The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized.

(1851)

**§ 15 No
imprisonment for
debt (1851)**

No imprisonment for debt.

§15 No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

(1851)



§ 16 Redress in courts (1851, amended 1912)

Redress for injury; Due process.

§16 All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.
(1851, am. 1912)

§ 17 Hereditary privileges, etc. (1851)

No hereditary privileges.

§17 No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this State.
(1851)

§ 18 Suspension of laws (1851)

Suspension of laws.

§18 No power of suspending laws shall ever be exercised, except by the General Assembly.
(1851)

§ 19 Inviolability of private property (1851)

Eminent domain.

§19 Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.
(1851)

§ 19a Damages for wrongful death (1912)

Damages for wrongful death.

§19a The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.
(1912)

§ 19b Property

Protect private property rights in ground water, lakes and other



**rights in ground
water, lakes, and
other
watercourses**

watercourses.

§19b. (A) The protection of the rights of Ohio's property owners, the protection of Ohio's natural resources, and the maintenance of the stability of Ohio's economy require the recognition and protection of property interests in ground water, lakes, and watercourses.

(B) The preservation of private property interests recognized under divisions (C) and (D) of this section shall be held inviolate, but subservient to the public welfare as provided in Section 19 of Article I of the Constitution.

(C) A property owner has a property interest in the reasonable use of the ground water underlying the property owner's land.

(D) An owner of riparian land has a property interest in the reasonable use of the water in a lake or watercourse located on or flowing through the owner's riparian land.

(E) Ground water underlying privately owned land and nonnavigable waters located on or flowing through privately owned land shall not be held in trust by any governmental body. The state, and a political subdivision to the extent authorized by state law, may provide for the regulation of such waters. An owner of land voluntarily may convey to a governmental body the owner's property interest held in the ground water underlying the land or nonnavigable waters located on or flowing through the land.

(F) Nothing in this section affects the application of the public trust doctrine as it applies to Lake Erie or the navigable waters of the state. (G) Nothing in Section 1e of Article II, Section 36 of Article II, Article VIII, Section 1 of Article X, Section 3 of Article XVIII, or Section 7 of Article XVIII of the Constitution shall impair or limit the rights established in this section.

(2008)

**§ 20 Powers
reserved to the
people (1851)**

Powers reserved to the people.

§20 This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

(1851)

**§ 21 Preservation
of the freedom to**

Preservation of the freedom to choose health care and health care coverage



**choose health
care and health
care coverage**

§21 (A) No federal, state, or local law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.

(B) No federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance.

(C) No federal, state, or local law or rule shall impose a penalty or fine for the sale or purchase of health care or health insurance.

(D) This section does not affect laws or rules in effect as of March 19, 2010; affect which services a health care provider or hospital is required to perform or provide; affect terms and conditions of government employment; or affect any laws calculated to deter fraud or punish wrongdoing in the health care industry.

(E) As used in this Section,

(1) "Compel" includes the levying of penalties or fines.

(2) "Health care system" means any public or private entity or program whose function or purpose includes the management of, processing of, enrollment of individuals for, or payment for, in full or in part, health care services, health care data, or health care information for its participants.

(3) "Penalty or fine" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee established by law or rule by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this section.

(2011)



Proof-of-Claim – B. 1 / 8

The -:Declaration of independence, July 4, 1776, p 1;

The -:Articles of Confederation July 9, 1778. p 4;

**The -:Constitution for the United States of America
September 12, 1787. p 10;**

**The -:first 12 Amendments to the Constitution, 1789 –
1804 – ratified. P 21;**

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Gila County, Az, Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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THE
DECLARATION OF INDEPENDENCE

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN
UNITED STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

July 4, 1776.

We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established, should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only. He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

VOL. I.—I.

A

THE DECLARATION OF INDEPENDENCE.

July 4, 1776.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offences;

For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.



THE DECLARATION OF INDEPENDENCE.

3

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

July 4, 1776.

We, therefore, the representatives of the UNITED STATES OF AMERICA, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, FREE and INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as FREE and INDEPENDENT STATES, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our lives, our fortunes, and our sacred honour.

JOHN HANCOCK.

New Hampshire.—Josiah Bartlett, William Whipple, Matthew Thornton.

Massachusetts Bay.—Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry.

Rhode Island, &c.—Stephen Hopkins, William Ellery.

Connecticut.—Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott.

New York.—William Floyd, Philip Livingston, Francis Lewis, Lewis Morris.

New Jersey.—Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark.

Pennsylvania.—Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross.

Delaware.—Caesar Rodney, George Read, Thomas M'Kean.

Maryland.—Samuel Chase, William Paca, Thomas Stone, Charles Carroll of Carrollton.

Virginia.—George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jun., Francis Lightfoot Lee, Carter Braxton.

North Carolina.—William Hooper, Joseph Hewes, John Penn.

South Carolina.—Edward Rutledge, Thomas Hayward, Jun., Thomas Lynch, Jun., Arthur Middleton.

Georgia.—Button Gwinnett, Lyman Hall, George Walton.



ARTICLES OF CONFEDERATION.

To all to whom these presents shall come,

We, the undersigned, Delegates of the States affixed to our names, send greeting:

Whereas the Delegates of the United States of America in Congress assembled, did on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the Independence of America, agree to certain Articles of Confederation and Perpetual Union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION,

between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

July 9, 1778.

ARTICLE 1. The style of this confederacy shall be, "THE UNITED STATES OF AMERICA."

ART. 2. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation, expressly delegated to the United States, in Congress assembled.

ART. 3. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ART. 4. § 1. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction, shall be laid by any State on the property of the United States, or either of them.

§ 2. If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offence.

§ 3. Full faith and credit shall be given, in each of these States, to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. 5. § 1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

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§ 2. No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years, in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

§ 3. Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of these States.

§ 4. In determining questions in the United States in Congress assembled, each State shall have one vote.

§ 5. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on, Congress, except for treason, felony or breach of the peace.

ART. 6. § 1. No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

§ 2. No two or more States shall enter into any treaty, confederation, or alliance whatever, between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

§ 3. No State shall lay any imposts or duties which may interfere with any stipulations in treaties, entered into by the United States, in Congress assembled, with any king, prince, or State, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

§ 4. No vessels of war shall be kept up in time of peace, by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up, by any State, in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

§ 5. No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or State, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

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ART. 7. When land forces are raised by any State, for the common defence, all officers of, or under the rank of colonel, shall be appointed by the legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. 8. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ART. 9. § 1. The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article, of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States, shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

§ 2. The United States, in Congress assembled, shall also be the last resort on appeal, in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given, by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent



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or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

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§ 3. All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

§ 4. The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

§ 5. The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated, "*A Committee of the States*," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them, in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within



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July 9, 1778. the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip, as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

§ 6. The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

§ 7. The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

Art. 10. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States, in the Congress of the United States assembled, is requisite.

Art. 11. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Art. 12. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

Art. 13. Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the



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United States, and be afterwards confirmed by the legislatures of every State. July 9, 1778.

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands, in Congress.

Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

On the part and behalf of the State of New Hampshire.—Josiah Bartlett, John Wentworth, Jun. (August 8, 1778.)

On the part and behalf of the State of Massachusetts Bay.—John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, Samuel Holten.

On the part and behalf of the State of Rhode Island and Providence Plantations.—William Ellery, Henry Marchant, John Collins.

On the part and behalf of the State of Connecticut.—Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams.

On the part and behalf of the State of New York.—James Duane, Francis Lewis, William Duer, Gouverneur Morris.

On the part and in behalf of the State of New Jersey.—Jno. Witherspoon, Nath. Scudder, (November 26, 1778.)

On the part and behalf of the State of Pennsylvania.—Robert Morris, Daniel Roberdeau, Jona. Bayard Smith, William Clingan, Joseph Reed, (July 22, 1778.)

On the part and behalf of the State of Delaware.—Thomas M'Kean, (February 12, 1779.) John Dickinson, (May 5, 1779.) Nicholas Van Dyke.

On the part and behalf of the State of Maryland.—John Hanson, (March 1, 1781.) Daniel Carroll, (March 1, 1781.)

On the part and behalf of the State of Virginia.—Richard Henry Lee, John Banister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee.

On the part and behalf of the State of North Carolina.—John Penn, (July 21, 1778.) Corns. Harnett, Jno. Williams.

On the part and behalf of the State of South Carolina.—Henry Laurens, William Henry Drayton, Jno. Mathews, Richard Hutson, Thos. Heyward, Jun.

On the part and behalf of the State of Georgia.—Jno. Walton, (July 24, 1778.) Edwd. Telfair, Edward Langworthy.

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THE CONSTITUTION OF THE UNITED STATES.

Purposes for which the Constitution was ordained and established.

Legislative powers vested in Congress.

House of Representatives.

Representatives and direct taxes to be apportioned according to respective numbers.

Census to be taken every ten years.

Representatives in Congress.

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. (a)

ARTICLE 1. § 1. All legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. (b)

§ 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative, and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four,

(a) *Martin, heir at law of Fairfax, v. Hunter's Lessee*, 1 Wheat. 304; 3 Cond. Rep. 575. *Briscoe et al. v. the Bank of the Commonwealth of Kentucky*, 11 Peters, 257. *McCulloch v. The State of Maryland*, 4 Wheat. 316; 4 Cond. Rep. 466. *Gibbons v. Ogden*, 9 Wheat. 1. *Barron v. The Mayor and City Council of Baltimore*, 7 Peters, 243. *Marbury v. Madison*, 1 Cranch, 137; 1 Cond. Rep. 267. *United States v. Smith*, 6 Wheat. 153; 4 Cond. Rep. 619. *Owing v. Norwood*, 6 Cranch, 344; 2 Cond. Rep. 275.

(b) The object of the Constitution was to establish three great departments of government: the Legislative, the Executive, and the Judicial departments. The first was to pass laws; the second to approve and execute them; the third to expound and enforce them. *Martin, heir at law of Fairfax, v. Hunter's Lessee*, 1 Wheat. 304; 3 Cond. Rep. 575.

The Constitution unavoidably deals in general language. It did not suit the purpose of the people in framing this great charter of our liberties to provide for minute specifications of its powers, or to declare the means by which those powers were to be carried into execution. It was foreseen that that would be a perilous and difficult, if not an impracticable task. The instrument was not intended merely to provide for the exigencies of a few years, but was to endure through a long lapse of ages; the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be made indispensable to effectuate the general objects of the charter; and restrictions and specifications which at present might seem salutary, might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms; leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and remodel the exercise of its own powers as its own wisdom, and the public interests should require. *Martin, Ac. v. Hunter*, 1 Wheat. 304; 3 Cond. Rep. 575.



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Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. (a)

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

§ 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

§ 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

§ 5. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent

Vacancies in the representation, how filled.

Speaker and officers of H. R., Impeachment. Senate, how composed, Senators, how chosen.

Each Senator to have one vote. One third of the Senators to be chosen every second year. Vacancies during recess of the Legislature of a State. How filled.

Qualifications of Senators.

Vice President of U. S. president of Senate.

The Senate to choose their officers. President *pro tempore*.

The Senate to have the sole power to try impeachments. When the President of U. S. is tried, the Chief Justice shall preside.

Judgment in case of impeachment. Party convicted subject to indictment at law.

Times and places for holding elections. Congress may at anytime make or alter regulations made by the States, except as to the places of choosing Senators.

Congress to assemble once a year.

Each House

(a) North Carolina adopted the Constitution by a convention called in November, 1789, and became a member of the Union, before June 4, 1790. Rhode Island, by a convention held in May, 1790, assented to the Constitution. Kentucky was admitted into the Union, June 1, 1792, act of 1791, ch. 4. Vermont was admitted into the Union, March 4, 1791, act of 1791, ch. 7. Tennessee was admitted into the Union, June 1, 1796, act of 1796, ch. 47. Ohio was established as a state of the Union, by act of April 30, 1802, ch. 40. Louisiana was admitted into the Union, April 30, 1812, vol. 2, p. 701. Indiana was admitted into the Union, Dec. 11, 1816, vol. 3, p. 339. Mississippi was admitted into the Union, Dec. 10, 1817, vol. 3, p. 472. Illinois was admitted into the Union, Dec. 3, 1818, vol. 3, p. 536. Alabama was admitted into the Union, Dec. 14, 1819, vol. 3, p. 608. Maine was admitted into the Union by an act of Congress, passed March 3, 1820. Missouri was admitted into the Union, March 2, 1821, vol. 3, p. 645 and App. Arkansas was admitted into the Union, June 15, 1836, ch. 100. Michigan was admitted into the Union, Jan. 26, 1837, ch. 99. Iowa and Florida were authorized to become states of the Union, by act of March 3, 1845, ch. 48.



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to be the judge of the elections, returns, and qualifications of its members. A majority to form a quorum.

Rules of proceeding.

Each House to keep a journal. Yeas and nays.

Adjournments of the Houses of Congress.

Compensation of the Senators and Representatives. Privileged from arrest, with exceptions. Not to be questioned in any other place for any speech or debate in either House.

Appointment to office of Senators or Representatives. No person holding any office under the U. S. to be a member of either House during his continuance in office.

Bills for raising revenue.

Bills, after having passed Congress, to be presented to the President. Proceedings when the President disapproves.

Every order, resolution, or vote, of both Houses (except on a question of adjournment) to be presented to the President of the U. S.

Powers of Congress.

members, in such manner, and under such penalties, as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

§ 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from, the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

§ 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days, (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

§ 8. The Congress shall have power(a)

(a) Congress must possess the choice of means, and must be empowered to use any means, which are in fact conducive to the exercise of a power granted by the Constitution. *United States v. Fisher, et al.; Assignees of Blight*, 2 Cranch's Rep. 353; 1 Conn. Rep. 421.

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To lay and collect taxes, duties, imposts and excoises,(a) to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:(b)

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:(c)

To establish an uniform rule of naturalization,(d) and uniform laws on the subject of bankruptcies throughout the United States:(e)

To lay taxes, and provide for the common defence and welfare. Duties to be uniform.
To borrow money.
To regulate commerce.
Naturalization.
Bankruptcies.

The powers granted to Congress are not exclusive of similar powers existing in the States, unless where the Constitution has expressly, in terms, given an exclusive power to Congress; or the exercise of a like power is prohibited to the States; or there is a direct repugnancy, or incompatibility in the exercise of it by the States. The example of the first class is to be found in the exclusive legislation delegated to Congress over places purchased by the consent of the legislature of the State in which the same shall be located for forts, arsenals, dock-yards, &c.; of the second class, of the prohibition of a State to coin money, or emit bills of credit; of the third class, the power to establish a uniform rule of naturalization, and the delegation of admiralty and maritime jurisdiction. In all other cases the States retain concurrent authority with Congress. *Houston v. Moore*, 5 Wheat. 1; 4 Cond. Rep. 589.

An act of Congress repugnant to the Constitution cannot become the law of the land. *Marbury v. Madison*, 1 Cranch, 137; 1 Cond. Rep. 267.

The mere grant of power to Congress does not imply a prohibition on the States to exercise the same power. Whenever the terms in which such a power is granted to Congress require that it should be exercised exclusively by Congress, the subject is as completely taken from the State legislatures, as if they had been expressly forbidden to act upon it. *Sturges v. Crowninshield*, 4 Wheat. 122; 4 Cond. Rep. 409.

(a) The power of Congress to levy and collect taxes, duties, imposts, and excises, is co-extensive with the territory of the United States. *Loughborough v. Blake*, 5 Wheat. 317; 4 Cond. Rep. 660.

The power of Congress to exercise exclusive legislation, in all cases whatever, within the District of Columbia, includes the power of taxing it. *Ibid.*

The authority of Congress to lay and collect taxes, does not interfere with the power of the States to tax for the support of their own governments; nor is the exercise of that power by the States, an exercise of any portion of the power that is granted to the United States. *Gibbons v. Ogden*, 9 Wheat. 1; 5 Cond. Rep. 562.

(b) The constitutional provision that direct taxes shall be apportioned among the several States, according to their respective numbers, to be ascertained by a census, was not intended to restrict the power of imposing direct taxes to States only. *Loughborough v. Blake*, 5 Wheat. 317; 4 Cond. Rep. 660.

(c) An act of Congress, laying an embargo for an indefinite period of time, is constitutional and valid. *The United States v. The William*; 2 Hall's Am. Law Jour. 255.

The power of regulating commerce extends to the regulation of navigation. *Gibbons v. Ogden*, 9 Wheat. 1; 5 Cond. Rep. 562.

The power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations, and among the several States. It does not stop at the external boundary of a State; but it does not extend to a commerce which is completely internal. *Ibid.*

The power to regulate commerce is general, and has no limitations but such as are prescribed by the Constitution itself. This power, so far as it extends, is exclusively vested in Congress, and no part of it can be exercised by a State. *Ibid.*

The power of regulating commerce extends to navigation carried on by vessels employed in transporting passengers. *Ibid.*

All those powers which relate to merely municipal legislation, or which may be properly called internal police, are not surrendered (by the States) or restrained, and consequently in relation to those the authority of a State is complete, unqualified, and exclusive. *The City of N. York v. Miln*, 11 Peters, 102.

The act of the legislature of New York passed February 1824, entitled, "An Act concerning passengers in vessels arriving in the port of New York," is not a regulation of commerce, but of police; and being so, it was passed in the exercise of a power which belonged to that State. *Ibid.*

The power to regulate commerce, includes the power to regulate navigation, as connected with the commerce with foreign nations and among the States. It does not stop at the mere boundary line of a State, nor is it confined to acts done on the waters, or in the necessary course of the navigation thereof. It extends to such acts done on the land, which interfere with, obstruct, or prevent the due exercise of the powers to regulate commerce and navigation with foreign nations, and among the States. Any offence which thus interferes with, obstructs, or prevents such commerce and navigation, though done on land, may be punished by Congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers. *The United States v. Lawrence Coombs*, 12 Peters, 72.

Persons are not the subjects of commerce, and not being imported goods, they do not fall within the meaning founded upon the Constitution, of a power given to Congress, to regulate commerce, and the prohibition of the States for imposing a duty on imported goods. *Ibid.*; *Gibbons v. Ogden*, 9 Wheat. 1; 5 Cond. Rep. 562.

(d) Under the Constitution of the United States, the power of naturalization is exclusively in Congress. *Chirac v. Chirac*, 2 Wheat. 259; 4 Cond. Rep. 111; *Houston v. Moore*, 5 Wheat. 1; 4 Cond. Rep. 589.

(e) The powers of Congress to establish uniform laws on the subject of bankruptcy throughout the

B



To coin money. To fix the standard of weights and measures.

To punish counterfeiters.

Post-offices.
To promote the progress of science and useful arts.

Inferior tribunals.

Piracies on the high seas.

To declare war.

To raise armies.

Navy, &c.

Government of the army and navy.

Militia.

For the organization, &c. of the militia.

Exclusive Legislation over seat of government of the U. S.

Exclusive authority over places purchased with the consent of States.

To make laws for carrying into execution all powers vested in government of U. S.

Migration or importation of persons.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads:

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the Supreme Court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations: (a)

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies: but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress. (b)

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. And,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. (c)

§ 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

United States, does not exclude the right of the States to legislate on the same subject, except when the power is actually exercised by Congress, and the State laws conflict with those of Congress. *Ogden v. Saunders*, 12 Wheat. 213; 6 Cond. Rep. 523; *Sturges v. Crowninshield*, 4 Wheat. 122; 4 Cond. Rep. 469.

Since the adoption of the Constitution of the United States, a state has authority to pass a Bankrupt law, provided such law does not impair the obligation of contracts; and provided there be no act of Congress in force to establish a uniform system of bankruptcy, conflicting with such law. *Sturges v. Crowninshield*, 4 Wheat. 122; 4 Cond. Rep. 469.

(a) The act of the 3d March, 1819, chap. 76, sec. 5, referring to the law of nations for a definition of the crime of piracy, is a constitutional exercise of the power of Congress to define and punish that crime. *United States v. Smith*, 5 Wheat. 153; 4 Cond. Rep. 619. See also *United States v. Palmer*, 3 Wheat. 610; 4 Cond. Rep. 352.

(b) The act of Congress of Feb. 28, 1795, to provide for the calling out the militia to execute the laws of the Union, suppress insurrections, and repel invasions, is within the constitutional powers of Congress. *Martin v. Mott*, 12 Wheat. 19; 6 Cond. Rep. 410.

(c) Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution. *United States v. Fisher et al.*, 2 Cranch, 358; 1 Cond. Rep. 421. *Van Horne's Lessee v. Dorrance*, 2 Dall. 304; *Marbury v. Madison*, 1 Cranch, 137; 1 Cond. Rep. 287, 268. *The United States v. Bevens*, 3 Wheat. 336; 4 Cond. Rep. 276. *McCulloch v. Maryland*, 4 Wheat. 316; 4 Cond. Rep. 466. *United States v. Tingey*, 5 Peters, 115. *Anderson v. Dunn*, 6 Wheat. 204. *Dugan v. The United States*, 3 Wheat. 172; 4 Cond. Rep. 223. *The Exchange*, 7 Cranch, 116; 2 Cond. Rep. 439. *Osborn v. The Bank of the United States*, 9 Wheat. 738; 5 Cond. Rep. 741. *Harrison v. Sterry*, 5 Cranch, 289; 2 Cond. Rep. 260. *Postmaster General v. Early*, 12 Wheat. 136; 6 Cond. Rep. 480.



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The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. (a)

No bill of attainder or *ex post facto* law shall be passed. (b)

No capitation, or other direct tax, shall be laid, unless in proportion to the *census* or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

§ 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; (c) pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. (d)

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. (e) No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ART. II. § 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as follows:

Writ of Habeas Corpus.

Bills of attainder, or *ex post facto* laws.

Capitation or other direct tax.

No tax or duty on articles exported from any State.

No preference to ports of one State over another.

No money drawn from the treasury but by law. Receipts and expenditures published.

No title of nobility to be granted.

Limitation of the powers of the States.

Executive power vested in a President of the U. S. Duration of office.

(a) *Ex parte* Burford, 3 Cranch, 446. *Ex parte* Bollman, 4 Cranch, 75; 2 Cond. Rep. 33. *Ex parte* Kearney, 7 Wheat, 38; 6 Cond. Rep. 226. *Ex parte* Tobias Watkins, 3 Peters, 193. *Ex parte* Milburn, 9 Peters, 704. *Martin v. Mott*, 12 Wheat, 19; 6 Cond. Rep. 410.

(b) The prohibition of the Federal Constitution of *ex post facto* laws extends to penal statutes only; and does not extend to cases affecting only the civil rights of individuals. *Calder et al. v. Bull*, 3 Dall. 386; 1 Cond. Rep. 172. *Fletcher v. Peck*, 6 Cranch, 87; 2 Cond. Rep. 308. *Ogden v. Saunders*, 12 Wheat, 213; 6 Cond. Rep. 523.

(c) *Briscoe v. The Bank of the Commonwealth of Kentucky*, 11 Peters, 257. *Craig v. The State of Missouri*, 4 Peters, 431. *Sturges v. Crowninshield*, 4 Wheat, 122; 4 Cond. Rep. 409. *Ogden v. Saunders*, 12 Wheat, 213; 6 Cond. Rep. 523. *Cooper v. Telfair*, 4 Dall. 14; 1 Cond. Rep. 211.

(d) If any act of the legislature is repugnant to the Constitution, it is, *ipso facto*, void; and it is the duty of the court so to declare it. *Vanhorne's Lessee v. Dorrance*, 2 Dall. 304.

The Constitution fixes the limits to the exercise of legislative authority, and prescribes the orbit in which it must move. Whatever may be the case in other countries, yet here there can be no doubt that any act of the Legislature repugnant to the Constitution is absolutely void. *Ibid.* *Fletcher v. Peck*, 6 Cranch, 87; 2 Cond. Rep. 308.

The legislature of a state can pass no *ex post facto* law. An *ex post facto* law is one which renders an act punishable, which was not punishable when it was committed. *Ibid.* *Houston v. Moore*, 5 Wheat, 1; 4 Cond. Rep. 589.

The invalidity of a state law, as impairing the obligation of contracts, does not depend on the extent of the change which the law effects in the contract. *Green v. Biddle*, 8 Wheat, 1; 6 Cond. Rep. 369. *Briscoe v. The Bank of the Commonwealth of Kentucky*, 11 Peters, 257. *New Jersey v. Wilson*, 7 Cranch, 164; 2 Cond. Rep. 457. *Terrett v. Taylor*, 9 Cranch, 43; 3 Cond. Rep. 254. *Trustees of Dartmouth College v. Woodward*, 4 Wheat, 518; 4 Cond. Rep. 526. *The Proprietors of the Charles River Bridge v. The Proprietors of the Warren Bridge*, 11 Peters, 420. *Sturges v. Crowninshield*, 4 Wheat, 122; 4 Cond. Rep. 409. *Hawkins v. Barney's Lessee*, 5 Peters, 456. *Mason v. Hails*, 12 Wheat, 370; 6 Cond. Rep. 536. *Farmers' and Mechanics' Bank v. Smith*, 6 Wheat, 131; 6 Cond. Rep. 35. *Satterlee v. Mathewson*, 2 Peters, 380. *Wilkinson v. Leland*, 2 Peters, 627.

(e) *Brown v. The state of Maryland*, 12 Wheat, 419; 6 Cond. Rep. 554.

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THE CONSTITUTION OF THE UNITED STATES.

Manner of
electing Pre-
sident and Vice
President.

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President. (a)

Electors of
President and
Vice President.

Qualifications
of the Presi-
dent.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Vacancy in
the office of
President. How
supplied.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected.

Compensation
for the services
of the Presi-
dent.

The President shall at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Oath of office
of the Presi-
dent.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear, (or affirm,) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

§ 2. The President shall be commander-in-chief of the army and

(a) By an amendment to the Constitution, a substitute for this paragraph was adopted. Amendment, Art. 12, § 1. This amendment was proposed in October 1803, and was ratified before September 1804. See the amendment, *post*, p. 22.



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navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; (a) and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments. (b)

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

§ 3. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may on extraordinary occasions, convene both Houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive a.assadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

§ 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ART. III. § 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office. (c)

§ 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the

Powers and duties of the President.

May grant reprieves and pardons.

May make treaties, by and with the advice and consent of the Senate.

Appointments to office.

Vacancies during the recess of the Senate.

Give Congress information of the State of the Union.

Convene Congress on extraordinary occasions. When he may adjourn Congress.

Other powers and duties.

Removals from office by impeachment and conviction of crimes.

Judicial powers.

Judges to hold office during good behaviour.

Compensation not to be diminished during continuance in office.

Extent of judicial power.

(a) The decisions of the Supreme Court of the United States on the powers and duties of the President of the United States have been the following: *Marbury v. Madison*, 1 Cranch, 137; 1 Cond. Rep. 267; 1 Peters, 296; 12 Peters, 524. *Williams v. The Suffolk Ins. Co.*, 13 Peters, 415.

(b) *Am. Ins. Comp. v. Canter*, 1 Peters, 511, 517; with Mr. Justice Johnson's opinion. *Ex parte Duncan N. Hennen*, 13 Peters, 230.

(c) The decisions of the Supreme Court of the United States on the 1st and 2d sections of the 3d article of the Constitution have been: *The State of Rhode Island v. The State of Massachusetts*, 12 Peters, 657-72. *McBride v. Hoey*, 11 Peters, 167. *Marbury v. Madison*, 1 Cranch, 137; 1 Cond. Rep. 267. *Ex parte Crane*, 5 Peters, 190. *Ex parte Milburn*, 7 Peters, 704. *Town of Pawlet v. Clark et al.*, 9 Cranch, 292; 3 Cond. Rep. 408. *Ex parte Kearney*, 7 Wheat, 38; 5 Cond. Rep. 225. *McCluny v. Silliman*, 2 Wheat, 369; 4 Cond. Rep. 162. *The United States v. Bevans*, 3 Wheat, 336; 4 Cond. Rep. 275. *United States v. Hamilton*, 3 Dall. 17. *Ex parte Bollman*, 4 Cranch, 75; 2 Cond. Rep. 33. *Ex parte Tobias Watkins*, 3 Peters, 193. *Cherokee Nation v. The State of Georgia*, 5 Peters, 1. *Cohens v. The State of Virginia*, 6 Wheat, 284. *Osborn v. The Bank of the United States*, 9 Wheat, 738; 5 Cond. Rep. 741. *The United States v. Ortega*, 11 Wheat, 467; 6 Cond. Rep. 394. *Fowler v. Lindsey et al.*, 3 Dall. 411. *The United States v. Goodwin*, 7 Cranch, 108; 2 Cond. Rep. 434.

The third article of the Constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws and treaties of the United States, when any question respecting them shall assume such form that the judicial power is capable of acting on it. That power is capable of acting, only when the subject is submitted to it by a party who asserts his rights in a form prescribed by law. It then becomes a case.

Osborn et al. v. The Bank of the United States, 9 Wheat, 738; 5 Cond. Rep. 741.

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United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

Original jurisdiction of the Supreme Court.
Appellate jurisdiction of the Supreme Court.

In all cases affecting ambassadors, other public ministers and consuls, (a) and those in which a State shall be party, the Supreme Court shall have original jurisdiction. (b) In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make. (c)

Trial by jury.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Treason.
Conviction for treason.

§ 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Punishment of treason.
Attainder.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

The public acts, &c., of the States to have full faith and credit.

ART. IV. § 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof. (d)

Citizens of the States entitled to equal privileges.
Fugitives from justice.

§ 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Fugitives from labour.

No person held to service or labour in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall

(a) An indictment under the crimes act of 1790, chap. 9, sec. 23, for infracting the law of nations by offering violence to the person of a foreign minister, is a case "affecting ambassadors and other public ministers, or consuls," within the second section of the third article of the Constitution of the United States. *The United States v. Ortega*, 11 Wheat. 467; 6 Cond. Rep. 394.

(b) On the original jurisdiction of the Supreme Court, the following cases have been decided: *Ex parte Kearney*, 7 Wheat. 38; 5 Cond. Rep. 225. *McCluny v. Sullivan*, 2 Wheat. 369; 4 Cond. Rep. 162. *The Columbian Insurance Company v. Wheelwright*, 7 Wheat. 534; 5 Cond. Rep. 334. *United States v. Hamilton*, 3 Dall. 17. *Ex parte Tobias Watkins*, 3 Peters, 193. *Ex parte Crane et al.*, 5 Peters 190. *United States v. Ravara*, 2 Dall. 297. *Cherokee Nation v. The State of Georgia*, 5 Peters, 1. *The State of New Jersey v. The State of New York*, 5 Peters, 234. *Ex parte Juan Madrazzo*, 7 Peters, 627. *The State of Rhode Island v. The State of Massachusetts*, 12 Peters, 657-755. *Cohens v. The State of Virginia*, 6 Wheat. 264; 5 Cond. Rep. 90. *Osborn v. The Bank of the United States*, 9 Wheat. 738; 5 Cond. Rep. 741. *Fowler et al. v. Lindsey et al.*, 3 Dall. 411.

(c) Upon the appellate powers of the Supreme Court, the following cases have been decided: *United States v. Goodwin*, 7 Cranch, 108; 2 Cond. Rep. 434. *Wiscart v. Dauchy*, 3 Dall. 321; 1 Cond. Rep. 144. *United States v. Moore*, 3 Cranch, 159; 1 Cond. Rep. 490. *Osborn v. The Bank of the United States*, 9 Wheat. 738; 5 Cond. Rep. 741. *Owings v. Norwood's Lessee*, 5 Cranch, 344; 2 Cond. Rep. 275. *Martin v. Hunter's Lessee*, 1 Wheat. 304; 3 Cond. Rep. 575. *Gordon v. Caldwell*, 3 Cranch, 289; 1 Cond. Rep. 624. *Ex parte Kearney*, 7 Wheat. 38; 5 Cond. Rep. 225. *Inglee v. Coolidge*, 2 Wheat. 363; 4 Cond. Rep. 155. *Gelston et al. v. Hoyt*, 3 Wheat. 246; 4 Cond. Rep. 244. *Nicholls et al. v. Hodges' Ex'r*, 1 Peters, 562. *Buel v. Van Ness*, 8 Wheat. 312; 5 Cond. Rep. 445. *Miller v. Nicholls*, 4 Wheat. 311; 4 Cond. Rep. 465. *Matthews v. Zane et al.*, 7 Wheat. 164; 5 Cond. Rep. 265. *Houston v. Moore*, 3 Wheat. 433; 4 Cond. Rep. 286. *Williams v. Norris*, 12 Wheat. 117; 6 Cond. Rep. 462. *Montgomery v. Hernandez*, 12 Wheat. 129; 6 Cond. Rep. 475. *Gibbons v. Ogden*, 6 Wheat. 448; 5 Cond. Rep. 134. *Weston et al. v. The City Council of Charleston*, 2 Peters, 449.

(d) *Mills v. Duryee*, 7 Cranch, 481; 2 Cond. Rep. 578. *Hampton v. McConnel*, 3 Wheat. 234; 4 Cond. Rep. 243. See act of May 26, 1790, chap. 11. Act of March 27, 1804, chap. 56.



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be delivered up on claim of the party to whom such service or labour may be due.(a)

§ 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

§ 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ART. V. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ART. VI. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land: and the judges, in every State, shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ART. VII. The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand

(a) Prigg v. The Commonwealth of Pennsylvania, 16 Peters, 539. The clause in the Constitution relating to fugitives from labour, manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no State law or regulation can in any way qualify, regulate, control, or restrain. Any law or regulation which interrupts, limits, delays, or postpones the rights of the owner to the immediate command of his service or labour, operates pro tanto, a discharge of the slave therefrom. The question can never be how much he is discharged from; but whether he is discharged from any service by the natural and necessary operation of the State laws, or State regulations. The question is not one of quantity and degree, but of withholding or controlling the incidents of a positive right.

The owner of a fugitive slave has the same right to take him in a State to which he has escaped or fled, that he had in the State from which he escaped; and it is well known that this right to seizure or recapture is universally acknowledged in all the slave-holding States. *Ibid.*

New States.
Formation of
new States out
of other States.

Congress to
have power to
dispose of and
make regula-
tions respecting
the territories
or other property
of the U. S.

Guarantee by
the U. S. of a
republican form
of government
to every State;
and each State
to be protected
from invasion,
and against do-
mestic vio-
lence.

Amendments
to Constitution.

No State,
without its con-
sent, shall be
deprived of an
equal suffrage
in the Senate.

Debts &c.,
contracted be-
fore the adop-
tion of the Con-
stitution to be
valid against
the U. S.

The Constitu-
tion and laws
of the U. S. or
treaties, the
supreme law of
the land.

Oath or affir-
mation to sup-
port the Consti-
tution.

No religious
test a qualifi-
cation for office.

Ratification of
the Constitution.

THE CONSTITUTION OF THE UNITED STATES.

seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON, PRESIDENT, and Deputy from Virginia.

New Hampshire.—John Langdon, Nicholas Gilman.

Massachusetts.—Nathaniel Gorham, Rufus King.

Connecticut.—William Samuel Johnson, Roger Sherman.

New York.—Alexander Hamilton.

New Jersey.—William Livingston, David Brearley, William Paterson, Jonathan Dayton.

Pennsylvania.—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

Delaware.—George Read, Gunning Bedford, Jun., John Dickinson, Richard Bassett, Jacob Broom.

Maryland.—James M'Henry, Daniel of St. Thomas Jenifer, Daniel Carroll.

Virginia.—John Blair, James Madison, Jun.

North Carolina.—William Blount, Richard Dobbs Spaight, Hugh Williamson.

South Carolina.—John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

Georgia.—William Few, Abraham Baldwin.

Attest:

WILLIAM JACKSON, *Secretary.*



AMENDMENTS TO THE CONSTITUTION.(a)

ART. I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ART. II. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ART. III. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ART. IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.(b)

ART. V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;(c) nor shall be compelled, in any criminal case, to be witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ART. VI. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

ART. VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.(d)

ART. VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ART. IX. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ART. X. The powers not delegated to the United States by the Con-

Religion.
Freedom of
Speech. Right
of petition.

Right to bear
and keep arms.

Quartering of
soldiers.

Unreasonable
searches and
seizures prohi-
bited.

No warrant to
issue but on
oath or affirma-
tion.

Trials for cap-
ital offences, or
infamous
crimes.

No one to be
twice put in
jeopardy of life
or limb, for the
same offence.

Private prop-
erty not to be
taken for public
use without just
compensation.

Trial by jury
in criminal
cases.

Trial by jury
in civil cases.

Excessive bail
not to be re-
quired, nor ex-
cessive punish-
ments inflicted.

Enumeration
of rights not to
be construed to
deny or dispar-
age those re-
tained by the
people. Re-
served powers.

(a) The first ten of these amendments were proposed by Congress, (with others which were not ratified by three fourths of the legislatures of the several states,) by resolution of 1789, post, pp. 97, 98, and were ratified before 1791. The eleventh amendment was proposed by Congress by resolution of the year 1794, post, p. 402, and was ratified before 1796. The twelfth article was proposed by Congress by resolution of October, 1803, vol. 2, p. 306, and was ratified before September, 1804.

(b) *Ex parte Burford*, 3 Cranch, 448; 1 Cond. Rep. 594.

(c) *United States v. Haskell and Francis*, 4 Wash. C. C. R. 402. *United States v. Gilbert*, 2 Sumner's C. C. R. 19.

(d) The amendments to the Constitution of the United States, by which the trial by jury was secured, may, in a just sense, be well construed to embrace all suits which are not of equity or admiralty jurisdiction, whatever may be the form they may assume to settle legal rights. *Parsons v. Bedford et al.* 3 Peters, 433.

AMENDMENTS TO THE CONSTITUTION.

Limitation of
the judicial
power.

Election of
President and
Vice President
of the U. S.

stitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

ART. XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.^(a)

ART. XII. § 1.(b) The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately by ballot the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

§ 2. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice President: a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

§ 3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

(a) The amendment to the Constitution by which the judicial power was declared not to extend to any suit commenced or prosecuted by a citizen or citizens of another State, or by foreign subjects against a State, prevented the exercise of jurisdiction in any case past or future. *Hollingsworth v. The State of Virginia*, 3 Dall. 378; 1 Cond. Rep. 169.

(b) This amendment was proposed in October, 1803, and was ratified before September, 1804.



Proof-of-Claim – B. 2 / 8

The -:13th Amendments to the Constitution, 1809;

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:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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JOURNAL

OF

THE SENATE

OF

THE UNITED STATES OF AMERICA;

BEING THE SECOND SESSION OF THE ELEVENTH CONGRESS:

BEGUN AND HELD

AT THE CITY OF WASHINGTON,

NOVEMBER 27, 1809,

AND IN THE THIRTY-FOURTH YEAR OF THE INDEPENDENCE OF THE SAID STATES.

Printed by order of the Senate of the United States.

WASHINGTON:

PRINTED BY GALE & SEATON.

1821.

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CONGRESS OF THE UNITED STATES.

THE Second Session of the Eleventh Congress, conformably to the act passed the last session, entitled "An act to fix the time for the next meeting of Congress," commenced this day; and the Senate assembled at the city of Washington.

MONDAY, NOVEMBER 27, 1809.

PRESENT,

From the State of New Hampshire, the Honorable Nicholas Gilman.
Massachusetts, the Honorable Timothy Pickering.
Connecticut, the Honorable Chauncey Goodrich.
Vermont, the Honorable { Stephen R. Bradley, and
Jonathan Robinson.
New Jersey, the Honorable John Lambert.
Pennsylvania, the Honorable { Andrew Gregg, and
Michael Leib.
Virginia, the Honorable William B. Giles.
North Carolina, the Honorable James Turner.
South Carolina, the Honorable { Thomas Sumter, and
John Gaillard.
Kentucky, the Honorable { Buckner Thruston, and
John Pope.
Ohio, the Honorable { Return Jonathan Meigs, and
Stanley Griswold.

The number of Senators present not being sufficient to constitute a quorum,

On motion,

The Senate adjourned to 11 o'clock to-morrow morning.

TUESDAY, NOVEMBER 28, 1809.

The Senate assembled; present as yesterday; and the Honorable Obediah German, from the state of New York, the Honorable James Hillhouse, from the state of Connecticut, the Honorable Elisha Mathewson, from the state of Rhode Island, and the Honorable Nahum Parker, from the state of New Hampshire, severally attended.

The Honorable Andrew Gregg, President pro tempore, resumed the chair.

The President communicated a letter from the surveyor of the public buildings, stating the difficulties that have prevented the entire completion of the permanent Senate chamber; which letter was read.

On motion, by Mr. Gilman,

Ordered, That the Secretary acquaint the House of Representatives that a quorum of the Senate is assembled and ready to proceed to business.

On motion,

Ordered, That Messrs. Gilman and Gaillard be a committee on the part of the Senate, together with such committee as may be appointed by the House of Representatives on their part, to wait on the President of the United States and notify him that a quorum of the two Houses is assembled and ready to receive any communications that he may be pleased to make to them.



SENATE.

Proceedings.

FEBRUARY, 1810.

preparation upon land, which, at this time, I would make for war. If hostilities happen, I do not dread invasion. But if, in such event, our enemy should be bold enough to invade our territory, I conceive the best and cheapest defence of the nation will be to supply our citizens with arms.

When Mr. BAYARD had concluded, the further consideration of the bill was made the order of the day for Monday next.—And on motion the Senate adjourned.

TUESDAY, February 13.

Mr. GREGG, from the committee to whom was referred, on the sixth instant, the bill from the House of Representatives, entitled "An act to prescribe the mode in which application shall be made for the purchase of land at the several land offices, and for the relief of Joab Garret," reported the bill with amendments; which were considered and agreed to, and the bill was ordered to the third reading as amended.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill from the House of Representatives, entitled "An act respecting the commercial intercourse between the United States and Great Britain and France, and for other purposes," reported it with an amendment.

The Senate resumed the motion made on the 18th of January for an amendment to the Constitution of the United States, together with the amendments reported thereon by the select committee.

On motion, by Mr. CRAWFORD, the resolution was recommitted to a select committee, to consist of five members, further to consider and report thereon; and Messrs. REED, CRAWFORD, LEIB, GILES, and PICKERING, were appointed the committee.

Mr. BAYARD, from the committee to whom was referred, on the first instant, the bill relative to the district court of the United States established in the Territory of Orleans, reported it with amendments; which were read.

On motion, by Mr. LEIB, it was agreed that the further consideration of the bill, entitled "An act respecting the commercial intercourse between the United States and Great Britain and France, and for other purposes," together with the amendment reported thereon, be the order of the day for Monday next.

WEDNESDAY, February 14.

Mr. GILMAN, from the committee, reported the amendments to the bill, entitled "An act to prescribe the mode in which application shall be made for the purchase of land at the several land offices, and for the relief of Joab Garret," correctly engrossed; and the bill was read the third time as amended.

Resolved, That this bill pass with amendments.

Mr. BRADLEY, from the committee to whom was referred, on the 20th of December, the bill, entitled "An act to revive an act, entitled 'An act

for the relief of the refugees from the British Provinces of Canada and Nova Scotia, and for other purposes," reported the bill with amendments; which were read.

The Senate resumed the consideration of the report of the select committee on the bill relative to the district court of the United States established in the Territory of Orleans; and, on motion, the Senate adjourned.

THURSDAY, February 15.

Mr. BRADLEY, from the committee to whom was recommitted, on the 6th instant, the bill, entitled, "An act authorizing the removal of slaves from one part of the District of Columbia to another," reported the bill with amendments; which were read.

The Senate resumed the bill granting a right of pre-emption to purchasers of public lands in certain cases; and, on motion by Mr. BRADLEY, the bill was recommitted to a select committee; to consist of five members; further to consider and report thereon; and Messrs. BRADLEY, GREGG, MERES, FRANKLIN, and CAMPBELL, were appointed the committee.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill, entitled "An act to revive an act, entitled 'An act for the relief of the refugees from the British Provinces of Canada and Nova Scotia, and for other purposes,'" and, having agreed thereto, the President reported the bill to the House amended accordingly.

Ordered, That this bill pass to the third reading as amended.

Mr. SMITH, of Maryland, from the committee to whom was referred, on the 6th instant, the bill, entitled "An act making appropriations for the support of Government during the year one thousand eight hundred and ten," reported the same with amendments; which were read.

Mr. HILLHOUSE submitted the following motion:

Resolved, That the President of the United States be requested to cause to be laid before the Senate information of the manner in which the act, entitled "An act to amend and continue in force certain parts of the act, entitled 'An act to interdict the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes,'" has been executed; and how far exports to, and imports from, the ports of Great Britain, have been, or now are permitted; and, whether collectors of districts in the United States do not admit to an entry goods the growth and manufacture of Great Britain, and, if so, under what authority the same is done."

Mr. REED, from the committee to whom was recommitted, on the 13th instant, the resolution for an amendment to the Constitution of the United States, together with the amendments reported thereon by the select committee, reported the same further amended, to read as follows:

"No title of nobility shall be granted by the United

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States; and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title of any kind whatever, from any Emperor, King, Prince, or foreign State. And, if any citizen of the United States shall accept of any title of nobility, or of any other title of distinction, above or below that of nobility, from any Emperor, King, Prince, or foreign State, or shall hold the same by descent, such citizen shall thenceforth be incapable of exercising or enjoying any of the rights and immunities of a free citizen of the United States, or of the individual States; and shall, also, be incapable of holding any office of profit or trust under them, or either of them."

FRIDAY, February 16.

The Senate resumed the motion made yesterday, for information on the manner in which the non-intercourse law has been executed.

On motion, by Mr. GILES, to amend the motion, by striking out all that follows the word "information," and inserting, in lieu thereof, these words:

"Whether, in the execution of the act, entitled 'An act to amend and continue in force certain parts of the act, entitled 'An act to interdict the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes,' exports to, and imports from Great Britain or France have been, or are now permitted; and, whether collectors of districts in the United States do not admit to an entry goods the growth and manufacture of Great Britain or France:'"

Mr. HILLHOUSE called for a division of the question, and it was taken on striking out; and passed in the affirmative—yeas 19, nays 10, as follows:

YEAS—Messrs. Anderson, Bradley, Campbell, Condit, Franklin, Gaillard, German, Giles, Gilman, Lambert, Mathewson, Meigs, Parker, Robinson, Smith of Maryland, Smith of New York, Tait, Turner, and Whiteside.

NAYS—Messrs. Bayard, Crawford, Goodrich, Gregg, Hillhouse, Horsey, Lloyd, Pickering, Reed, and Sumter.

On the question to adopt the amendment, amended as follows:

"Whether, in the execution of the act, entitled 'An act to amend and continue in force certain parts of the act, entitled 'An act to interdict the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes,' exports to, and imports from, the ports of Great Britain or France have been, or are now permitted; and whether collectors of districts in the United States do not admit to an entry goods the growth and manufacture of Great Britain or France; and the instructions under which such collectors have acted:'"

It was determined in the affirmative—yeas 29, nay 1, as follows:

YEAS—Messrs. Anderson, Bayard, Bradley, Campbell, Champlin, Condit, Crawford, Franklin, Gaillard, German, Giles, Gilman, Goodrich, Gregg, Hillhouse, Horsey, Lambert, Lloyd, Mathewson, Meigs, Parker, Pickering, Robinson, Smith of Maryland, Smith of New York, Sumter, Tait, Turner, and Whiteside.

NAY—Mr. Reed.

So it was *Resolved*, That the President of the United States be requested to cause to be laid before the Senate information whether, in the execution of the act, entitled "An act to amend and continue in force certain parts of the act, entitled 'An act to interdict the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes,' exports to, and imports from, the ports of Great Britain or France have been, or are now permitted; and whether collectors of districts in the United States do not admit to an entry goods the growth and manufacture of Great Britain or France; and the instructions under which such collectors have acted:

Ordered, That the Secretary lay this resolution before the President of the United States.

The Senate resumed, as in Committee of the Whole, the bill, entitled "An act making appropriations for the support of Government during the year 1810;" together with the amendments reported by the select committee; and, after progress, on motion by Mr. BAYARD, it was agreed that the further consideration thereof be postponed to Monday next.

MONDAY, February 19.

Mr. BRADLEY presented a petition from the committee in behalf of the Trustees of the Erie Literary Society, stating that the Legislature of the State of Ohio, in the year 1803, incorporated that society, with power to establish a college in the Connecticut Western Reserve; and that the Trustees have fixed upon the town of Burton, in the county of Granger, for the purpose; and praying a donation in land for the benefit of the institution; and the petition was read, and referred to a select committee, to consider and report thereon by bill or otherwise; and Messrs. BRADLEY, GREGG, and GOODRICH, were appointed the committee.

Mr. BRADLEY presented the petition of Amasa Soper, of Westminster, in the State of Vermont, late a Captain in the Revolutionary army of the United States, detailing his services and sufferings, and praying relief; and the petition was read:

The PRESIDENT communicated a report from the Secretary of War, on the sale of public arms to individual States, as authorized by the act of the 2d of April, 1808, entitled "An act authorizing the sale of public arms;" which was read, and ordered to lie for consideration.

Mr. LEIB presented the petition of Joseph Joshua Dyster, stating that he had discovered a new and important mode of propelling vessels through the water by means of steam; and praying Congress to grant him the privilege of obtaining for that purpose a patent right, he not having been long enough a resident in the United States to entitle him thereto; and the petition was read, and referred to a select committee, to consider and report thereon; and Messrs. LEIB, GOODRICH, and MATHEWSON, were appointed the committee.

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Proceedings.

APRIL, 1810.

ments reported thereto by the select committee, and having adopted the amendments, and having further amended the bill, the President reported it to the House accordingly. On the question, Shall this bill be engrossed and read a third time as amended? it was determined in the affirmative.

Mr. GILMAN, from the committee, reported that they had re-examined the amendments to the bill, entitled "An act regulating the Post Office Establishment," and that they were correctly engrossed; and the Secretary returned the bill, together with the amendments, to the House of Representatives.

The Senate resumed the consideration of the motion made on the 18th of January, for an amendment to the Constitution of the United States respecting titles of nobility, together with the amendments reported by the select committee; and an amendment was submitted by Mr. READ; and, also, an amendment was submitted by Mr. LLOYD; and it was agreed that the further consideration thereof be the order of the day for to-morrow.

On motion, it was agreed that the further consideration of the bill, entitled "An act to examine into the title of the batture in front of the suburb of St. Mary," be the order of the day for to-morrow.

On motion, by Mr. TURNER, the bill, entitled "An act for the relief of John Minor, administrator of Reuben Minor," was referred to a select committee to consider and report thereon; and Messrs. TURNER, GREGG, and SMITH, of New York were appointed the committee.

Mr. LLOYD gave notice that, to-morrow, he should ask leave to bring in a bill to erect a light-house at the entrance of Scituate harbor, a stone column on a spit of sand at the entrance into Boston harbor, and a beacon on Beach point, near Plymouth harbor, in the State of Massachusetts, and a light at the entrance of bayou St. John into Lake Ponchartrain.

The Senate resumed, as in Committee of the Whole, the bill, entitled "An act to amend an act, entitled 'An act for the establishment of a turnpike company in the county of Alexandria, in the District of Columbia;'" together with the amendment reported thereto by the select committee, and, having agreed to the amendment, the President reported the bill to the House amended accordingly. On the question, Shall this bill be read a third time as amended? it was determined in the affirmative.

Mr. BRENT, from the committee on the subject of banks, reported a bill to incorporate the Bank of Potomac; which was read, and passed to the second reading.

Mr. BRADLEY submitted for consideration an amendment to the bill, entitled "An act for the relief of Elizabeth Hamilton; also, an amendment to the bill, entitled "An act for the relief of Jared Shattuck;" which were severally read.

The Senate resumed, as in Committee of the Whole, the bill entitled "An act for the relief of John Thompson;" and, after debate, the Senate adjourned.

THURSDAY, April 12.

The bill, entitled "An act for the relief of William Baypham," was read the second time, and passed to the third reading.

The bill to incorporate the Bank of Potomac was read the second time; and, on motion by Mr. ANDERSON, the further consideration thereof was postponed until the first Monday in December next.

Mr. ANDERSON, from the committee to whom was recommitted the bill for the preservation of peace, and the maintenance of the authority of the United States, in the ports, harbors, and waters, under their jurisdiction, reported it with amendments; which were read.

On motion, by Mr. BRADLEY, the bill making further provision for the corps of engineers was referred to a select committee, to consider and report thereon; and Messrs. BRADLEY, GREGG, and SMITH, of New York, were appointed the committee.

Mr. LLOYD asked and obtained leave to bring in a bill to erect a light-house at the entrance of Scituate harbor; a stone column on a spit of sand at the entrance into Boston harbor; and a beacon on Beach Point, near Plymouth harbor, in the State of Massachusetts; a light at the entrance of Bayou St. John, into Lake Pontchartrain; and a light on Bird Island, near the eastern extremity of Lake Erie; which bill was read, and passed to a second reading.

Mr. GILMAN, from the committee, reported the bill for the establishment of a Quartermaster's department, correctly engrossed, and the further consideration thereof was postponed until to-morrow.

The Senate resumed the consideration of the motion made on the 18th January, for an amendment to the Constitution of the United States respecting titles of nobility, together with the amendment proposed thereto on the 30th March.

On motion, by Mr. GILES, that the further consideration thereof be postponed to the next session of Congress, it was determined in the negative—yeas 16, nays 18, as follows:

YEAS—Messrs. Anderson, Bradley, Campbell, Condit, Franklin, Gaillard, German, Giles, Gilman, Gregg, Lambert, Mathewson, Meigs, and Robinson.

NAYS—Messrs. Brent, Champlin, Clay, Crawford, Goodrich, Hillhouse, Horsey, Leib, Lloyd, Pickering, Pope, Reed, Smith of Maryland, Smith of New York, Sumter, Tait, Turner, and Whiteside.

Ordered, That the further consideration thereof be postponed until Monday next.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to establish post roads;" a bill entitled "An act to alter the times of holding the circuit court of the United States for the district of Maryland; also a bill, entitled "An act for the better accommodation of the General Post Office and Patent Office, and for other purposes;" in which bills they desire the concurrence of the Senate.

The Senate resumed, as in Committee of the Whole, the bill, entitled "An act to examine into

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SENATE.

Territory of Orleans.

APRIL, 1810.

FRIDAY, April 20.

The resolution to authorize the Secretary of the Senate to pay, out of the contingent fund, to Henry Miller and others — dollars each; was read the second time.

On motion, by Mr. TURNER, to amend the resolution, so as to include the Chaplains; it passed in the negative.

Ordered, That the resolution pass to a third reading.

A message from the House of Representatives informed the Senate that the House have passed the bill, entitled "An act concerning the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes," in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and passed to the second reading.

Mr. GILMAN, from the committee, reported the amendments to the bill, entitled "An act to establish post roads," correctly engrossed; and the bill was read the third time as amended; and, on motion, by Mr. TURNER, it was agreed, by unanimous consent, further to amend the bill.

Resolved, That this bill pass with amendments.

The resolution of the House of Representatives, prolonging the session to the first day of May next, was read the second time, and passed to the third reading.

The Senate resumed the consideration of the motion made on the 18th of January, for an amendment to the Constitution of the United States respecting titles of nobility, together with the amendments proposed thereto; and, after debate, on motion, by Mr. BRADLEY, the further consideration thereof was postponed; and, on motion, by Mr. REED, made the order of the day for Monday next.

The bill, entitled "An act to allow the benefit of drawback on merchandise transported by land conveyance from Newport to Boston, and from Boston to Newport, in like manner as if the same were transported coastwise," was read the third time, and passed.

The bill, entitled "An act for the relief of Moses Young," was read the third time, and passed.

Mr. CRAWFORD, from the committee to whom was referred the bill, entitled "An act for the relief of Margaret Lapsley, Grove Pomeroy, Arthur St. Clair, David Blackwell, Lucy Dixon, and John Murray," reported it without amendment.

TERRITORY OF ORLEANS.

The Senate resumed, as in Committee of the Whole, the bill to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes; and, on motion, by Mr. CLAY, to amend the bill, by adding at the end of the third section, the following words:

"*Provided, further*, That the said convention shall,

by an article in the constitution so to be formed, irrevocable without the consent of the United States, provide, that, after the admission into the Union of the said Territory of Orleans as a State, the laws which such State may pass shall be promulgated, and its records of every description shall be preserved, and its written, judicial, and legislative proceedings conducted, in the language in which the laws and the written, judicial, and legislative proceedings of the United States are now published and conducted."

It was determined in the affirmative—yeas 17, nays 12, as follows:

YEAS—Messrs. Bayard, Campbell, Champlin, Clay, Giles, Gilman, Goodrich, Horsey, Lambert, Leib, Lloyd, Meigs, Pickering, Pope, Smith of Maryland, Smith of New York, and Turner.

NAYS—Messrs. Anderson, Bradley, Condit, Crawford, Franklin, Gaillard, German, Gregg, Hillhouse, Reed, Sumter, and Whiteside.

And a further amendment was proposed by Mr. HORSEY; and, on his motion, the Senate adjourned.

SATURDAY, April 21.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill, entitled "An act to alter the times of holding the circuit court of the United States, for the district of Maryland," reported it without amendment.

The bill, entitled "An act concerning the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes," was read the second time, and referred to a select committee, to consist of five members, to consider and report thereon; and Messrs. SMITH of Maryland, CRAWFORD, ANDERSON, LEIB, and BRADLEY, were appointed the committee.

Mr. SMITH, of Maryland, asked and obtained leave to bring in a bill to authorize the President of the United States to employ the public armed ships in protecting the commerce of the United States; which bill was read, and passed to the second reading.

Mr. ANDERSON, from the committee to whom was referred the bill, entitled "An act providing for the sale of certain lands in the Indiana Territory, and for other purposes," reported it with amendments.

The Senate resumed, as in Committee of the Whole, the bill to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes.

On motion, by Mr. WHITESIDE, the bill was recommended to a select committee, to consist of five members, further to consider and report thereon; and Messrs. GILES, WHITESIDE, CRAWFORD, GREGG, and GOODRICH, were appointed the committee.

The resolution of the 19th instant, authorizing the Secretary of the Senate to pay, out of the contingent fund, to Henry Miller and others, — dollars each, was read the third time, and the

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APRIL, 1810.

Territory of Orleans—Titles of Nobility, &c.

SENATE.

The bill, entitled "An act providing for the better accommodation of the General Post Office and Patent Office, and for other purposes," was read the third time, and passed.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing a loan of money, for a sum not exceeding the amount of the principal of the public debt, reimbursable during the year 1810;" in which bill they desire the concurrence of the Senate. The said bill was read, and passed to the second reading.

Mr. GILES, from the committee to whom was referred the bill to enable the people of the Territory of Orleans to form a constitution and State government; and for the admission of such State into the Union on an equal footing with the original States, and for other purposes, reported it with amendments.

The Senate resumed, as in Committee of the Whole, the bill making provision for the establishment of a National Bank. And on motion by Mr. BAYARD, that the farther consideration thereof be postponed until the first Monday in December next; it was determined in the affirmative—yeas 17, nays 14, as follows:

YEAS—Messrs. Bayard, Bradley, Brent, Champlin, Crawford, German, Gilman, Goodrich, Hillhouse, Horsey, Lloyd, Pickering, Pope, Reed, Smith of New York, Sumter, and Turner.

NAYS—Messrs. Anderson, Clay, Condit, Franklin, Gaillard, Giles, Gregg, Lambert, Leib, Mathewson, Meigs, Robinson, Smith of Maryland, and Whiteside.

THURSDAY, April 26.

The Senate resumed, as in Committee of the Whole, the bill, entitled "An act providing for the sale of certain lands in the Indiana Territory, and for other purposes;" and, having agreed to the amendments reported by the select committee, the PRESIDENT reported it to the House accordingly; and on the question, Shall this bill be read the third time as amended? it was determined in the affirmative.

Mr. GILMAN, from the committee, reported the bill allowing compensation to Robert Robinson correctly engrossed; and the bill was read the third time; and the blank having been filled with the words *five hundred*—

Resolved, That this bill pass, and that the title thereof be "An act allowing compensation to Robert Robinson."

The Senate resumed the motion made yesterday on the subject, which was amended and agreed to, as follows:

Resolved, That the Secretary of the Treasury be directed to lay before the Senate a statement of all claims which have been adjusted and allowed at the Treasury Department, in virtue of the law, entitled "An act providing for the settlement of the claims of persons, under particular circumstances, barred by the limitations heretofore established;" and, also, a statement of the balances standing in the books of the Treasury against the United States, which are barred by the statute of

limitations, together with his opinion whether the said statute can be modified or repealed, as to that or any other description of claims, without subjecting the Government to imposition.

Mr. CLAY gave notice that to-morrow he should ask leave to bring in a bill, supplementary to an act, entitled "An act for the punishment of certain crimes against the United States."

The bill, entitled "An act authorizing a loan of money, for a sum not exceeding the amount of the principal of the public debt reimbursable during the year one thousand eight hundred and ten," was read the second time, and referred to a select committee, to consist of five members, to consider and report thereon, and Messrs. SMITH of Maryland, CRAWFORD, LLOYD, FRANKLIN, and HILLHOUSE, were appointed the committee.

TERRITORY OF ORLEANS.

The Senate resumed, as in Committee of the Whole, the bill to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes; together with the amendments reported thereto by the select committee. On motion, by Mr. HILLHOUSE, to add, at the end of the bill, the following words:

"Provided, That the several States shall assent thereto, or an amendment to the Constitution of the United States shall authorize Congress to admit said Territory of Orleans into the Union, on the footing of the original States:"

It was determined in the negative—yeas 8, nays 20, as follows:

YEAS—Messrs. Champlin, German, Goodrich, Hillhouse, Horsey, Lloyd, Pickering, and Reed.

NAYS—Messrs. Anderson, Brent, Clay, Condit, Crawford, Franklin, Gaillard, Giles, Gilman, Gregg, Lambert, Leib, Mathewson, Meigs, Pope, Smith of Maryland, Sumter, Tait, Turner, and Whiteside.

And the report of the select committee having been agreed to, and the bill further amended, the President reported it to the House accordingly. On the question, Shall this bill be engrossed and read a third time as amended? it was determined in the affirmative—yeas 18, nays 9, as follows:

YEAS—Messrs. Anderson, Brent, Clay, Condit, Crawford, Franklin, Gaillard, Giles, Gregg, Lambert, Lloyd, Mathewson, Meigs, Smith of Maryland, Sumter, Tait, Turner, and Whiteside.

NAYS—Messrs. Champlin, German, Gilman, Goodrich, Hillhouse, Horsey, Leib, Pickering, and Reed.

TITLES OF NOBILITY, &c.

The Senate resumed the consideration of the motion made on the 18th of January, for an amendment to the Constitution of the United States, respecting titles of nobility, together with the amendments proposed thereto.

On motion, that the further consideration thereof be postponed to the first Monday in December next, it was determined in the negative—yeas 8, nays 20, as follows:

YEAS—Messrs. Condit, Gilman, Gregg, Leib, Mathewson, Meigs, Tait, and Whiteside.

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NAYS—Messrs. Anderson, Brent, Champlin, Clay, Crawford, Franklin, Gaillard, German, Goodrich, Hillhouse, Horsey, Lambert, Lloyd, Pickering, Pope, Reed, Smith of Maryland, Smith of New York, Sumter, and Turner.

On motion, to amend the last report of the select committee, so as to read as follows:

"If any citizen of the United States shall accept, claim, receive, or retain, any title of nobility, or honor, or shall, without the consent of Congress, accept any present, pension, office, or emolument, of any kind whatever, from any Emperor, King, Prince, or foreign Power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them."

It was determined in the affirmative—yeas 26, nays 1, as follows:

YEAS—Messrs. Anderson, Brent, Champlin, Clay, Condit, Crawford, Franklin, Gaillard, German, Gilman, Goodrich, Hillhouse, Horsey, Lambert, Leib, Lloyd, Mathewson, Meigs, Pickering, Pope, Reed, Smith of Maryland, Sumter, Tait, Turner, and Whiteside.

NAY—Mr. Smith, of New York.

On motion, by Mr. POPE, to add to the resolution the following words: "And be subject to such other penalties and disabilities as may be provided by law:" it was determined in the negative—yeas 12, nays 14, as follows:

YEAS—Messrs. Anderson, Brent, Clay, Gregg, Leib, Lloyd, Pickering, Pope, Reed, Sumter, Tait, and Turner.

NAYS—Messrs. Champlin, Condit, Crawford, Franklin, Gaillard, German, Gilman, Goodrich, Hillhouse, Lambert, Mathewson, Smith of Maryland, Smith of New York, and Whiteside.

And the resolution having been further amended by inserting the words "and retain," after the words "accept," in the second instance, the President reported it to the House accordingly. On the question, Shall this resolution be engrossed and read a third time as amended? it was determined in the affirmative.

FRIDAY, April 27.

The Senate resumed, as in Committee of the Whole, the bill making further provision for the corps of engineers, together with the amendment reported thereto by the select committee. On motion, it was agreed that the further consideration thereof be postponed until Monday next.

The Senate resumed, as in Committee of the Whole, the bill appropriating a sum of money for procuring munitions of war, and for other purposes.

On motion, it was referred to a select committee, to consider and report thereon; and Messrs. SMITH of Maryland, GILMAN, and CLAY, were appointed the committee.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill from the House of Representatives authorizing a loan, reported the same with the following proposed amendment:

SEC. 4. And be it further enacted, That the incorporation of the subscribers to the Bank of the United

States, made and established by the act, entitled "An act to incorporate the subscribers to the Bank of the United States," be, and the same is hereby, continued until the thirtieth day of June, one thousand eight hundred and twelve.

Mr. CLAY asked and obtained leave to bring in a bill, supplementary to an act, entitled "An act for the punishment of certain crimes against the United States;" which bill was read and passed to the second reading.

The Senate resumed, as in Committee of the Whole, the bill for the preservation of peace, and maintenance of the authority of the United States in the ports, harbors, and waters, under their jurisdiction, together with the amendments reported thereto by the select committee; and the further consideration thereof was postponed until the first Monday in December next.

Mr. GILMAN, from the committee, also reported the resolution for an amendment to the Constitution, respecting titles of nobility, correctly engrossed; and the resolution was read the third time as amended.

On the question, Shall this resolution pass as amended? it was determined in the affirmative—yeas 19, nays 5, as follows:

YEAS—Messrs. Anderson, Champlin, Crawford, Franklin, Gaillard, Goodrich, Gregg, Hillhouse, Lambert, Leib, Lloyd, Mathewson, Meigs, Pickering, Reed, Smith of Maryland, Sumter, Tait, and Turner.

NAYS—Messrs. German, Gilman, Robinson, Smith of New York, and Whiteside.

So it was *Resolved*, That this resolution pass as amended.

On motion, by Mr. LLOYD, it was agreed, by unanimous consent, that a bill in addition to an act, entitled "An act concerning the Library for the use of both Houses of Congress," be now twice read.

On the question, Shall this bill be engrossed and read the third time? it was determined in the affirmative.

Mr. GILMAN, from the committee, reported the bill last mentioned, correctly engrossed, and the bill was read the third time by unanimous consent, and passed.

The bill entitled "An act providing for the sale of certain lands in the Indiana Territory, and for other purposes," was read the third time as amended.

Resolved, That this bill pass with amendments.

The Senate resumed, as in Committee of the Whole, the bill, entitled "An act for the relief of Jared Shattuck," together with the amendment proposed thereto; and the further consideration thereof was postponed to the first Monday in December next.

The Senate resumed, as in Committee of the Whole, the bill, entitled "An act for the relief of Margaret Lapsley, Grove Pomeroy, Arthur St. Clair, David Blackwell, Lucy Dickson, and John Murray."

On motion, it was agreed that the further consideration thereof be the order of the day for tomorrow.

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We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, *chosen by the Legislature thereof*, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; *and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the*



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Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in



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going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;



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To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
To constitute Tribunals inferior to the supreme Court;
To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;
To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
To provide and maintain a Navy;
To make Rules for the Government and Regulation of the land and naval Forces;
To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;
To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And
To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.



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No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice



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President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States. No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time



:Constitution for the United States of America w/ Bill of Rights

of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article. III.

Section. 1. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — *between a State and Citizens of another State*; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attained.

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.



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Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.



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The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same. The Word, "the," being interlined between the seventh and eighth Lines of the first Page, The Word "Thirty" being partly written on an Erasure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

Attest William Jackson
Secretary

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

Go. WASHINGTON — Presidt.

and deputy from Virginia

New Hampshire {

JOHN LANGDON

NICHOLAS GILMAN

Massachusetts {

NATHANIEL GORHAM

RUFUS KING

Connecticut {

WM. SAML. JOHNSON

ROGER SHERMAN

New York . . .

ALEXANDER HAMILTON

New Jersey {

WIL: LIVINGSTON

DAVID BREARLEY.

WM. PATERSON.

JONA: DAYTON

Pennsylvania {

B FRANKLIN

THOMAS MIFFLIN

ROBT MORRIS

GEO. CLYMER

THOS. FITZ SIMONS



:Constitution for the United States of America w/ Bill of Rights

JARED INGERSOLL
JAMES WILSON
GOUV MORRIS
Delaware {
GEO: READ
GUNNING BEDFORD jun
JOHN DICKINSON
RICHARD BASSETT
JACO: BROOM
Maryland {
JAMES MCHENRY
DAN OF ST THOS. JENIFER
DANL CARROLL
Virginia {
JOHN BLAIR
JAMES MADISON jr
North Carolina {
WM. BLOUNT
RICHD. DOBBS SPAIGHT
HU WILLIAMSON
South Carolina {
J. RUTLEDGE
CHARLES COTESWORTH PINCKNEY
CHARLES PINCKNEY
PIERCE BUTLER
Georgia {
WILLIAM FEW
ABR BALDWIN

In Convention Monday, September 17th, 1787.

Present

The States of

New Hampshire, Massachusetts, Connecticut, MR. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled. Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which



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Electors should be appointed by the States which have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected. That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution. By the Unanimous Order of the Convention
Go. WASHINGTON — Presidt.
W. JACKSON Secretary.

Bill of Rights

The conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added.

Article the first [Not Ratified]

After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

Article the second

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Article the third [Amendment I]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article the fourth [Amendment II]^[4]



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A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article the fifth [Amendment III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article the sixth [Amendment IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the seventh [Amendment V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article the eighth [Amendment VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article the ninth [Amendment VII]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article the tenth [Amendment VIII]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the eleventh [Amendment IX]



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The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article the twelfth [Amendment X]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XI

Passed by Congress March 4, 1794. Ratified February 7, 1795.

Note: Article III, section 2, of the Constitution was modified by amendment 11.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT XII

Passed by Congress December 9, 1803. Ratified June 15, 1804.

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The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; -- the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; -- The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. --]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority



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of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. *Superseded by section 3 of the 20th amendment.

AMENDMENT XIII

"If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honour, or shall without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them."

Journal of the Senate-- November 21, 2021-A.D.- 03:35a.m.-

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1 Journal of the Senate-- November 21, 2021-A.D.- 03:35a.m.-

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%28sj004446%29%29%230040392&linkText=1 ~ means: See: Appended: Proof-of-the-claim- X .



Proof-of-Claim – B. 3 / 8

**Chap. XX.-- An Act to establish the Judicial Courts of
the United States**

1 stat. 73.

Statute I.

Sept. 24, 1789

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12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

CHAP. XX.—An Act to establish the Judicial Courts of the United States.(a)

STATUTE I.
Sept. 24, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the supreme court of the United States shall consist of a chief justice and five associate justices,(b) any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear date on the same day, according to their respective ages.

Supreme court to consist of a chief justice, and five associates.
Two sessions annually.
Precedence.

SEC. 2. *And be it further enacted,* That the United States shall be, and they hereby are divided into thirteen districts, to be limited and called as follows, to wit: one to consist of that part of the State of Massachusetts which lies easterly of the State of New Hampshire, and to be called Maine District; one to consist of the State of New Hampshire, and to be called New Hampshire District;(c) one to consist of the remaining part of the State of Massachusetts, and to be called Massachusetts district; one to consist of the State of Connecticut, and to be called Connecticut District; one to consist of the State of New York, and to be called New York District; one to consist of the State of New Jersey, and to be called New Jersey District; one to consist of the State of Pennsylvania, and to be called Pennsylvania District; one to consist of the State of Delaware, and to be called Delaware District; one to consist of the State of Maryland, and to be called Maryland District; one to consist of the State of Virginia, except that part called the District of Kentucky, and to be called Virginia District; one to consist of the remaining part of the State of Virginia, and to be called Kentucky District; one to consist of the State of South Carolina, and to be called South Carolina District; and one to consist of the State of Georgia, and to be called Georgia District.

Thirteen districts.

Maine.
N. Hampshire.
Massachusetts.
Connecticut.
New York.
New Jersey.
Pennsylvania.
Delaware.
Maryland.

Virginia.
Kentucky.
South Carolina.
Georgia.

SEC. 3. *And be it further enacted,* That there be a court called a District Court, in each of the afore mentioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four

A district court in each district.

(a) The 3d article of the Constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only where the subject is submitted to it by a party who asserts his right in a form presented by law. It then becomes a case. *Osborn et al. v. The Bank of the United States*, 9 Wheat. 738; 5 Cond. Rep. 741.

(b) By the act of April 29, 1802, chap. 31, the Supreme Court was declared to consist of a Chief Justice and six associate Justices, and by the act of March 3, 1827, chap. 34, it was made to consist of a Chief Justice and eight associate Justices.

By the act of April 29, 1802, chap. 31, the provision of the act of September 24, 1789, requiring two annual sessions of the Supreme Court, was repealed, and the 2d section of that act required that the associate Justice of the fourth circuit should attend at Washington on the first Monday of August annually, to make all necessary rules and orders, touching suits and actions depending in the court. This section was repealed by the 7th section of the act of February 28, 1839, chap. 36.

By an act passed May 4, 1826, chap. 37, the sessions of the Supreme Court were directed to commence on the second Monday in January annually, instead of the first Monday in February; and by an act passed June 17, 1844, the sessions of the Supreme Court were directed to commence on the first Monday in December annually.

(c) The jurisdiction and powers of the District Courts have been declared and established by the following acts of Congress: Act of September 24, 1789; act of June 5, 1794, sec. 6; act of May 10, 1800; act of December 31, 1814; act of April 10, 1816; act of April 20, 1818; act of May 16, 1820; act of March 3, 1793.

The decisions of the Courts of the United States on the jurisdiction of the District Courts have been: *The Thomas Jefferson*, 10 Wheat. 428; 8 Cond. Rep. 173. *M'Donough v. Danery*, 3 Dall. 188; 1 Cond. Rep. 94. *United States v. La Vengeance*, 3 Dall. 287; 1 Cond. Rep. 132. *Glass et al. v. The Betsey*, 3 Dall. 6; 1 Cond. Rep. 10. *The Alorta v. Blas Moran*, 9 Cranch, 359; 8 Cond. Rep. 425. *The Merino et al.*, 9 Wheat. 391; 5 Cond. Rep. 623. *The Josefa Segunda*, 10 Wheat. 312; 6 Cond. Rep. 111. *The Bolina*, 1 Gallis. C. C. R. 75. *The Robert Fulton*, Paine's C. C. R. 620. *Jansen v. The Vrouw Christina Magdalena*, Bee's D. C. R. 11. *Jennings v. Carson*, 4 Cranch, 2; 2 Cond. Rep. 2. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *Penhallow et al. v. Doane's Adm'rs*, 3 Dall. 54; 1 Cond. Rep. 2. *The United States v. Richard Peters*, 3 Dall. 121; 1 Cond. Rep. 60. *M'Lellan v. the United States*,

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G

Four sessions annually in a district; and when held.

Special district courts.
Stated district courts; when holden.

Special courts, where held.

Where records kept.

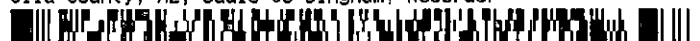
Three circuits, and how divided.
[Obsolete.]

sessions, the first of which to commence as follows, to wit: in the districts of New York and of New Jersey on the first, in the district of Pennsylvania on the second, in the district of Connecticut on the third, and in the district of Delaware on the fourth, Tuesdays of November next; in the districts of Massachusetts, of Maine, and of Maryland, on the first, in the district of Georgia on the second, and in the districts of New Hampshire, of Virginia, and of Kentucky, on the third Tuesdays of December next; and the other three sessions progressively in the respective districts on the like Tuesdays of every third calendar month afterwards, and in the district of South Carolina, on the third Monday in March and September, the first Monday in July, and the second Monday in December of each and every year, commencing in December next; and that the District Judge shall have power to hold special courts at his discretion. That the stated District Court shall be held at the places following, to wit: in the district of Maine, at Portland and Pownalsborough alternately, beginning at the first; in the district of New Hampshire, at Exeter and Portsmouth alternately, beginning at the first; in the district of Massachusetts, at Boston and Salem alternately, beginning at the first; in the district of Connecticut, alternately at Hartford and New Haven, beginning at the first; in the district of New York, at New York; in the district of New Jersey, alternately at New Brunswick and Burlington, beginning at the first; in the district of Pennsylvania, at Philadelphia and York Town alternately, beginning at the first; in the district of Delaware, alternately at Newcastle and Dover, beginning at the first; in the district of Maryland, alternately at Baltimore and Easton, beginning at the first; in the district of Virginia, alternately at Richmond and Williamsburgh, beginning at the first; in the district of Kentucky, at Harrodsburgh; in the district of South Carolina, at Charleston; and in the district of Georgia, alternately at Savannah and Augusta, beginning at the first; and that the special courts shall be held at the same place in each district as the stated courts, or in districts that have two, at either of them, in the discretion of the judge, or at such other place in the district, as the nature of the business and his discretion shall direct. And that in the districts that have but one place for holding the District Court, the records thereof shall be kept at that place; and in districts that have two, at that place in each district which the judge shall appoint.

SEC. 4. And be it further enacted, That the before mentioned districts, except those of Maine and Kentucky, shall be divided into three circuits, and be called the eastern, the middle, and the southern circuit. That the eastern circuit shall consist of the districts of New Hampshire, Massachusetts, Connecticut and New York; that the middle circuit shall consist of the districts of New Jersey, Pennsylvania, Delaware, Maryland and Virginia; and that the southern circuit shall consist of the districts of South Carolina and Georgia, and that there shall be held annually in each district of said circuits, two courts, which shall be called Circuit Courts, and shall consist of any two justices of

1 Gallia, C. C. R. 222. Hudson et al. v. Guestier, 6 Cranch, 281; 2 Cond. Rep. 374. Brown v. The United States, 8 Cranch, 110; 3 Cond. Rep. 56. De Lovio v. Boit et al., 4 Gallia, Rep. 398. Burke v. Trevitt, 1 Mason, 98. The Amiable Nancy, 3 Wheat, 546; 4 Cond. Rep. 322. The Abby, 1 Mason, 360. The Little Ann, Paine's C. C. R. 40. Slocum v. Mayberry et al., 3 Wheat, 1; 4 Cond. Rep. 1. Southwick v. The Postmaster General, 2 Peters, 442. Davis v. A New Brig, Gilpin's D. C. R. 476. Smith v. The Pekin, Gilpin's D. C. R. 203. Peters' Digest, "Courts," "District Courts of the United States."

The 3d section of the act of Congress of 1789, to establish the Judicial Courts of the United States, which provides that no summary writ, return of process, judgment, or other proceedings in the courts of the United States shall be abated, arrested or quashed for any defect or want of form, &c., although it does not include verdicts, ex nomine, but judgments are included; and the language of the provision, "writ, declaration, judgment or other proceeding, in court causes," and further "such writ, declaration, pleading, process, judgment or other proceeding whatsoever," is sufficiently comprehensive to embrace every conceivable step to be taken in a court, from the emanation of the writ, down to the judgment. Roach v. Hulings, 10 Peters, 319.



the Supreme Court, and the district judge of such districts, any two of whom shall constitute a quorum: *Provided*, That no district judge shall give a vote in any case of appeal or error from his own decision; but may assign the reasons of such his decision.

Sec. 5. *And be it further enacted*, That the first session of the said circuit court in the several districts shall commence at the times following, to wit: in New Jersey on the second, in New York on the fourth, in Pennsylvania on the eleventh, in Connecticut on the twenty-second, and in Delaware on the twenty-seventh, days of April next; in Massachusetts on the third, in Maryland on the seventh, in South Carolina on the twelfth, in New Hampshire on the twentieth, in Virginia on the twenty-second; and in Georgia on the twenty-eighth, days of May next, and the subsequent sessions in the respective districts on the like days of every sixth calendar month afterwards, except in South Carolina, where the session of the said court shall commence on the first, and in Georgia where it shall commence on the seventeenth day of October, and except when any of those days shall happen on a Sunday, and then the session shall commence on the next day following. And the sessions of the said circuit court shall be held in the district of New Hampshire, at Portsmouth and Exeter alternately, beginning at the first; in the district of Massachusetts, at Boston; in the district of Connecticut, alternately at Hartford and New Haven, beginning at the last; in the district of New York, alternately at New York and Albany, beginning at the first; in the district of New Jersey, at Trenton; in the district of Pennsylvania, alternately at Philadelphia and Yorktown, beginning at the first; in the district of Delaware, alternately at New Castle and Dover, beginning at the first; in the district of Maryland, alternately at Annapolis and Easton, beginning at the first; in the district of Virginia, alternately at Charlottesville and Williamsburgh, beginning at the first; in the district of South Carolina, alternately at Columbia and Charleston, beginning at the first; and in the district of Georgia, alternately at Savannah and Augusta, beginning at the first. And the circuit courts shall have power to hold special sessions for the trial of criminal causes at any other time at their discretion, or at the discretion of the Supreme Court. (a)

First session
of the circuit
courts; when
holden.
[Obsolete.]

Where holden.

Circuit courts.
Special ses-
sions.

(a) The sessions of the Circuit Courts have been regulated by the following acts: In ALABAMA—act of March 3, 1837. In ARKANSAS—act of March 3, 1837. In CONNECTICUT—act of September 24, 1789; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of April 29, 1802; act of May 13, 1802. In DELAWARE—act of September 24, 1789; act of March 3, 1797; act of April 29, 1802; act of March 24, 1804; act of March 3, 1837. In GEORGIA—act of September 24, 1789; act of August 11, 1790; act of April 13, 1792; act of March 3, 1797; act of April 29, 1802; act of May 13, 1802; act of Jan. 21, 1829. In KENTUCKY—act of March 3, 1801; act of March 8, 1802; act of March 2, 1803; act of Feb. 27, 1807; act of March 22, 1808; April 22, 1824. In LOUISIANA—act of March 3, 1837. In MAINE—act of March 3, 1801; act of March 8, 1802; act of March 30, 1820. In MARYLAND—act of Sept. 24, 1789; act of March 3, 1797; act of April 29, 1802; act of Feb. 11, 1830; act of March 3, 1837. In MASSACHUSETTS—act of Sept. 24, 1789; act of March 3, 1791; act of June 9, 1794; act of March 2, 1793; act of March 3, 1797; act of March 3, 1801; act of March 3, 1802; act of April 29, 1802; act of March 28, 1812. In MISSOURI—act of March 3, 1837. In MISSISSIPPI—act of March 3, 1839. In NEW HAMPSHIRE—act of Sept. 24, 1789; act of March 3, 1793; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of March 3, 1801; act of April 29, 1802; act of March 6, 1812. In NEW JERSEY—act of September 24, 1789; act of March 3, 1797; act of April 2, 1802. In NEW YORK—act of September 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of April 29, 1802; act of March 3, 1825; act of February 10, 1832; act of May 13, 1836; act of March 3, 1837. In NORTH CAROLINA—act of September 24, 1789; act of April 13, 1792; act of March 2, 1793; act of March 31, 1796; act of March 3, 1797; act of July 5, 1797; act of April 29, 1802; act of March 8, 1806; act of February 4, 1807. In OHIO—act of February 24, 1807; act of March 22, 1808; act of April 22, 1824; act of May 20, 1826. In PENNSYLVANIA—act of September 24, 1789; act of May 12, 1796; act of March 3, 1797; act of December 24, 1799; act of April 29, 1802; act of March 3, 1837. In RHODE ISLAND—act of June 23, 1790; act of March 3, 1791; act of March 2, 1793; act of May 22, 1796; act of March 3, 1797; act of March 3, 1801; act of March 8, 1802; act of April 29, 1802; act of March 28, 1812. In SOUTH CAROLINA—act of September 24, 1789; act of August 11, 1790; act of March 3, 1797; act of April 29, 1802; act of April 14, 1816; act of May 25, 1824; act of March 3, 1825; act of May 4, 1826; act of February 5, 1829. In TENNESSEE—act of February 24, 1807; act of March 22, 1808; act of March 10, 1812; act of January 13, 1831. In VERMONT—act of March 2, 1791; act of March 2, 1793; act of May 27, 1796; act of March 3, 1797; act of April 29, 1802; act of March 22, 1816. In VIRGINIA—act of September 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 3, 1797; act of April 29, 1802; act of March 2, 1837. See the General Index.



Supreme court
adjourned by
one or more
justices; circuit
courts adjourned.

District courts
adjourned.

The courts
have power to
appoint clerks.

Their oath or
affirmation.

Oath of jus-
tices of supreme
court and judges
of the district
court.

District courts
exclusive juris-
diction.

SEC. 6. *And be it further enacted*, That the Supreme Court may, by any one or more of its justices being present, be adjourned from day to day until a quorum be convened; and that a circuit court may also be adjourned from day to day by any one of its judges, or if none are present, by the marshal of the district until a quorum be convened: (a) and that a district court, in case of the inability of the judge to attend at the commencement of a session, may by virtue of a written order from the said judge, directed to the marshal of the district, be adjourned by the said marshal to such day, antecedent to the next stated session of the said court, as in the said order shall be appointed; and in case of the death of the said judge, and his vacancy not being supplied, all process, pleadings and proceedings of what nature soever, pending before the said court, shall be continued of course until the next stated session after the appointment and acceptance of the office by his successor.

SEC. 7. *And be it [further] enacted*, That the Supreme Court, and the district courts shall have power to appoint clerks for their respective courts, (b) and that the clerk for each district court shall be clerk also of the circuit court in such district, and each of the said clerks shall, before he enters upon the execution of his office, take the following oath or affirmation, to wit: "I, A. B., being appointed clerk of do solemnly swear, or affirm, that I will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God." Which words, so help me God, shall be omitted in all cases where an affirmation is admitted instead of an oath. And the said clerks shall also severally give bond, with sufficient sureties, (to be approved of by the Supreme and district courts respectively) to the United States, in the sum of two thousand dollars, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and determinations of the court of which he is clerk.

SEC. 8. *And be it further enacted*, That the justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: "I, A. B., do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God."

SEC. 9. *And be it further enacted*, That the district courts (c) shall have, exclusively of the courts of the several States, cognizance of all crimes and offences that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the

By the act of March 10, 1833, the Justice of the Supreme Court is required to attend but one circuit in the districts of Indiana, Illinois, and Michigan.

By an act passed in 1344, the Justices of the Supreme Court are empowered to hold but one session of the Circuit Court in each district in their several circuits. The Judges of the District Courts hold the other sessions of the Circuit Court in their several districts.

(a) The provisions of law on the subject of the adjournments of the Supreme Court in addition to the 6th section of this act, are, that in case of epidemical disease, the court may be adjourned to some other place than the seat of government. Act of February 25, 1799.

(b) By the 2d section of the act entitled "an act in amendment of the acts respecting the judicial system of the United States," passed February 28, 1839, chap. 36, it is provided "that all the circuit courts of the United States shall have the appointment of their own clerks, and in case of disagreement between the judges, the appointment shall be made by the presiding judge of the court." See ex parte Duncan N. Hennen, 13 Peters, 230.

(c) The further legislation on the subject of the jurisdiction and powers of the District Courts are: the act of June 8, 1794, ch. 60, sec. 8; act of May 10, 1800, chap. 51, sec. 5; act of February 24, 1807, chap. 13; act of February 24, 1807, chap. 18; act of March 3, 1815; act of April 16, 1816, chap. 52, sec. 6; act of April 20, 1818, chap. 38; act of May 15, 1820, chap. 106, sec. 4; act of March 3, 1823, chap. 72.

high seas; where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted; and shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas; (a) saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it; and shall also have exclusive original cognizance of all seizures on land, or other waters than as aforesaid, made, and of all suits for penalties and forfeitures incurred, under the laws of the United States. (b) And shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States. (c) And shall also have cognizance, concurrent as last mentioned, of all suits at common law where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And shall also have jurisdiction exclusively of the courts of the several States, of all suits against consuls or vice-consuls, except for offences above the description aforesaid. (d) And the trial of issues in fact, in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury.

Sec. 10. And be it further enacted, That the district court in Kentucky district shall, besides the jurisdiction aforesaid, have jurisdiction of all other causes, except of appeals and writs of error, hereinafter made cognizable in a circuit court, and shall proceed therein in the same

[Acts of June 5, 1794, sect. 6; act of Feb. 13, 1807; act of March 3, 1815, sect. 4.]
Original cognizance in maritime causes and of seizure under the laws of the United States.

Concurrent jurisdiction.

Trial of fact by jury.

Kentucky district court.
[Obsolete.]
1807, ch. 16.

(a) Jurisdiction of the District Courts in cases of admiralty seizures, under laws of impost, navigation and trade. *McDonough v. Danery*, 3 Dall. 188; 1 Cond. Rep. 94. *The United States v. La Vengeance*, 3 Dall. 297; 1 Cond. Rep. 132. *Glass et al. v. The Betsy*, 3 Dall. 6; 1 Cond. Rep. 10. *The Alerta*, 9 Cranch, 359; 3 Cond. Rep. 425. *The Mering et al.*, 9 Wheat. 391; 5 Cond. Rep. 623. *The Josefa Segunda*, 10 Wheat. 312; 6 Cond. Rep. 111. *Jennings v. Carson*, 4 Cranch, 2; 2 Cond. Rep. 2. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *Penhallow et al. v. Doane's Adm'r*, 3 Dall. 54; 1 Cond. Rep. 21. *United States v. Richard Peters*, 3 Dall. 121; 1 Cond. Rep. 60. *Hudson et al. v. Guestier*, 6 Cranch, 231; 2 Cond. Rep. 374. *Brown v. The United States*, 8 Cranch, 110; 3 Cond. Rep. 56. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *The Amiable Nancy*, 3 Wheat. 646; 4 Cond. Rep. 322. *Slocum v. Mayberry*, 2 Wheat. 1; 4 Cond. Rep. 1. *Gelston et al. v. Hoyt*, 3 Wheat. 246; 4 Cond. Rep. 244. *The Bolina*, 1 Gallis. C. C. R. 75. *The Robert Fulton*, 1 Paine's C. C. R. 630; Bee's D. C. R. 11. *De Lovio v. Boit et al.*, 2 Gallis. C. C. R. 398. *The Abby*, 1 Mason's Rep. 360. *The Little Ann*, Paine's C. C. R. 40. *Davis v. A New Brig*, Gilpin's D. C. R. 473. *The Catharine*, 1 Adm. Decis. 104.

(b) An information against a vessel under the act of Congress of May 22, 1794, on account of an alleged exportation of arms, is a case of admiralty and maritime jurisdiction; and an appeal from the District to the Circuit Court, in such a case is sustainable. It is also a civil cause, and triable without the intervention of a jury; under the 9th section of the judicial act. *The United States v. La Vengeance*, 3 Dall. 297; 1 Cond. Rep. 132. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *The Abby*, 1 Mason, 360. *The Little Ann*, Paine's C. C. R. 40.

When the District and State courts have concurrent jurisdiction, the right to maintain the jurisdiction attaches to that tribunal which first exercises it, and obtains possession of the thing. *The Robert Fulton*, Paine's C. C. R. 620.

(c) *Burke v. Trevitt*, 1 Mason, 26. The courts of the United States have exclusive jurisdiction of all seizures made on land or water, for a breach of the laws of the United States, and any intervention of State authority, which by taking the thing seized out of the hands of the officer of the United States, might obstruct the exercise of this jurisdiction, is unlawful. *Slocum v. Mayberry et al.*, 2 Wheat. 1; 4 Cond. Rep. 1.

(d) *Davis v. Packard*, 6 Peters, 41. As an abstract question, it is difficult to understand on what ground a State court can claim jurisdiction of civil suits against foreign consuls. By the Constitution, the judicial power of the United States extends to all cases affecting ambassadors, other public ministers and consuls; and the judiciary act of 1789 gives to the district courts of the United States, exclusively of the courts of the several States, jurisdiction of all suits against consuls and vice consuls, except for certain offences enumerated in this act. *Davis v. Packard*, 7 Peters, 276.

If a consul, being sued in a State court, omits to plead his privilege of exemption from the suit, and afterwards, on removing the judgment of the inferior court to a higher court by writ of error, claims the privilege, such an omission is not a waiver of the privilege. If this was to be viewed merely as a personal privilege, there might be grounds for such a conclusion. But it cannot be so considered; it is the privilege of the country or government which the consul represents. This is the light in which foreign ministers are considered by the law of nations; and our constitution and law seem to put consuls on the same footing in this respect. *Ibid.*

Maine district court.
[Obsolete.]

Circuit courts original cognizance where the matter in dispute exceeds five hundred dollars.

manner as a circuit court, and writs of error and appeals shall lie from decisions therein to the Supreme Court in the same causes, as from a circuit court to the Supreme Court, and under the same regulations. (a) And the district court in Maine shall, besides the jurisdiction herein before granted, have jurisdiction of all causes, except of appeals and writs of error herein after made cognizable in a circuit court, and shall proceed therein in the same manner as a circuit court: And writs of error shall lie from decisions therein to the circuit court in the district of Massachusetts in the same manner as from other district courts to their respective circuit courts.

SEC. 11. And be it further enacted, That the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State. (b) And shall have

(a) By an act passed February 24, 1807, the Circuit Court jurisdiction of the District Court of Kentucky was abolished.

(b) The amount laid in the declaration is the sum in controversy. If the plaintiff receive less than the amount so claimed, the jurisdiction of the court is not affected. *Green v. Lister*, 8 Cranch, 229. *Gordon v. Longest*, 16 Peters, 97. *Lessee of Hartsorn v. Wright*, Peters' C. C. R. 64.

By the 6th section of the act of February 21, 1794, "an act to promote the progress of the useful arts," &c., jurisdiction in actions for violations of patent rights, is given to the Circuit Courts. Also by the act of February 15, 1819, original cognizance, as well in equity as at law, is given to the Circuit Courts of all actions, and for the violation of copy rights. In such cases appeals lie to the Supreme Court of the United States. So also in cases of interest, or disability of a district judge. Act of May 8, 1792, sec. 11; act of March 2, 1809, sec. 1; act of March 3, 1821.

Jurisdiction in cases of injunctions on Treasury warrants of distress. Act of May 15, 1820, sec. 4. Jurisdiction in cases removed from State courts. Act of February 4, 1815, sec. 8; act of March 3, 1815, sec. 8.

Jurisdiction in cases of assigned debentures. Act of March 2, 1799. Jurisdiction of crimes committed within the Indian territories. Act of March 30, 1830, sec. 15; act of April 30, 1816, sec. 4; act of March 3, 1817, sec. 2.

Jurisdiction in bankruptcy. Act of August 19, 1841, chap. 9, [repealed.] Jurisdiction in cases where citizens of the same State claim title to land under a grant from a State other than that in which the suit is pending in a State court. Act of September 24, 1789, sec. 12. See *Colson v. Lewis*, 2 Wheat. 377; 4 Cond. Rep. 168.

Jurisdiction where officers of customs are parties. Act of February 4, 1815, sec. 8; act of March 3, 1815, sec. 6; act of March 3, 1817, sec. 2.

A circuit court though an inferior court in the language of the constitution, is not so in the language of the common law; nor are its proceedings subject to the scrutiny of those narrow rules, which the caution or jealousy of the courts at Westminster long applied to courts of that denomination; but are entitled to as liberal intendments and presumptions in favour of their regularity, as those of any supreme court. *Turner v. The Bank of North America*, 4 Dall. 8; 1 Cond. Rep. 205.

The Circuit Courts of the United States have cognizance of all offences against the United States, what those offences are depends upon the common law applied to the sovereignty and authorities conferred to the United States. *The United States v. Coolidge*, 1 Gallix. C. C. R. 488, 495.

Where the jurisdiction of the federal courts has once attached, no subsequent change in the relation or condition of the parties in the progress of the cause, will oust that jurisdiction. *The United States v. Meyers*, 2 Brocken. C. C. R. 518.

All the cases arising under the laws of the United States are not, per se, among the cases comprised within the jurisdiction of the Circuit Court, under the provisions of the 11th section of the judiciary act of 1789. *The Postmaster General v. Stockton and Stokes*, 12 Peters, 524.

Jurisdiction of the Circuit Courts of the United States in suits between aliens and citizens of another State than that in which the suit is brought:

The courts of the United States will entertain jurisdiction of a cause where all the parties are aliens, if none of them object to it. *Mason et al. v. The Blaireau*, 2 Cranch, 240; 1 Cond. Rep. 297.

The Supreme Court understands the expressions in the act of Congress, giving jurisdiction to the courts of the United States "where an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State," to mean that each distinct interest should be represented by persons, all of whom have a right to sue, or may be sued in the federal courts: that is, when the interest is joint, each of the persons concerned in that interest must be competent to sue or be liable to be sued in those courts. *Strawbridge v. Curtis*, 3 Cranch, 267; 1 Cond. Rep. 523.

Neither the Constitution nor the act of Congress regards the subject of the suit, but the parties to it. *Mossman's Exors v. Higginson*, 4 Dall. 12; 1 Cond. Rep. 210.

When the jurisdiction of the Circuit Court depends on the character of the parties, and each party consists of a number of individuals, each one must be competent to sue in the courts of the United States, or jurisdiction cannot be entertained. *Ward v. Arredondo et al.*, Paine's C. C. R. 410. *Strawbridge v. Curtis*, 3 Cranch, 267; 1 Cond. Rep. 523.

The courts of the United States have not jurisdiction, unless it appears by the record that it belongs



exclusive cognizance of all crimes and offences cognizable under the authority of the United States, (a) except where this act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable therein. But no person shall be arrested in one district for trial in another, in any civil action before a circuit or district court. (b) And no civil suit shall be brought before either of said courts against an inhabitant of the United States, by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ, nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favour of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange. (c) And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions herein after provided. (d)

Sec. 12. And be it further enacted, That if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court; and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial into the next circuit court, to be held in the district where the suit is pending, or if in the district of Maine to the district court next to be holden therein, or if in Kentucky district to the district court next to be holden therein, and offer good and sufficient surety for his entering in such court, on the first day of its session, copies of said process against him, and also for his there appearing and entering special bail in the cause, if special bail was originally requisite therein, it shall then be the duty of the state court to accept the surety, and proceed no further in the cause, and any bail that may have been originally taken shall be discharged, and the said copies being entered as aforesaid, in such court of the United States, the cause shall there proceed in the same manner as if it had been brought there by original process. (c) And any attach-

Exclusive cognizance of crimes and offences cognizable under the laws of the United States.

No person to be arrested in one district for trial in another on any civil suit.

Limitation as to civil suits. Actions on promissory notes.

Circuit courts shall also have appellate jurisdiction.

Matter in dispute above 500 dollars.

Removal of causes from state courts.

Special bail.

to them, as that the parties are citizens of different States. *Wood v. Wagon*, 2 Cranch, 9; 1 Cond. Rep. 335.

Where the parties to a suit are such as to give the federal courts jurisdiction, it is immaterial that they are administrators or executors, and that those they represent were citizens of the same State. *Chapdelaine et al. v. Ducheneaux*, 4 Cranch, 206; 2 Cond. Rep. 116. *Childress et al. v. Emory et al.*, 8 Wheat. 642; 5 Cond. Rep. 547. See also *Brown v. Strode*, 5 Cranch, 303; 2 Cond. Rep. 265. *Bingham v. Cabot*, 3 Dall. 383; 1 Cond. Rep. 170. *Gracie v. Palmer*, 8 Wheat. 699; 5 Cond. Rep. 661. *Messie v. Watts*, 6 Cranch, 148; 2 Cond. Rep. 332. *Sere et al. v. Pitot et al.*, 6 Cranch, 332; 2 Cond. Rep. 389. *Shute v. Davis, Peters*, C. C. R. 431. *Flanders v. The Aetna Ins. Com.*, 3 Mason, C. C. R. 158. *Kitchen v. Sullivan et al.*, 4 Wash. C. C. R. 84. *Briggs v. French*, 2 Sumner's C. C. R. 253.

(a) The Circuit Courts of the United States have jurisdiction of a robbery committed on the high seas under the 8th section of the act of April 30, 1790, although such robbery could not, if committed on land, be punished with death. *The United States v. Palmer et al.*, 3 Wheat. 610; 4 Cond. Rep. 352. See *The United States v. Coolidge et al.*, 1 Gallis. C. C. R. 485, 495. *The United States v. Coombs*, 12 Peters, 72.

The Circuit Courts have no original jurisdiction in suits for penalties and forfeitures arising under the laws of the United States, but the District Courts have exclusive jurisdiction. *Ketland v. The Cassius*, 2 Dall. 366.

(b) The petitioner was arrested in Pennsylvania, by the marshal of the district of Pennsylvania, under an attachment from the Circuit Court of Rhode Island, for a contempt in not appearing in that court after a monition, served upon him in the State of Pennsylvania, to answer in a prize cause as to a certain bale of goods condemned to the captors, which had come into the possession of Peter Graham, the petitioner. Held, that the circuit and district courts of the United States cannot, either in suits at law or equity, send their process into another district, except where specially authorized so to do by some act of Congress. *Ex parte Peter Graham*, 3 Wash. C. C. R. 456.

(c) *Bean v. Smith*, 2 Mason's C. C. R. 252. *Young v. Bryan*, 6 Wheat. 148; 5 Cond. Rep. 44. *Molan v. Torrance*, 5 Wheat. 587; 5 Cond. Rep. 666.

(d) *Smith v. Jackson*, Paine's C. C. R. 453.

(e) The Judge of a State Court to which an application is made for the removal of a cause into a court of the United States must exercise a legal discretion as to the right claimed to remove the cause;

Attachment of goods holden to final judgment.

Title of land where value exceeds 500 dollars.

If in Maine and Kentucky, where causes are removable. [Obsolete.]

Issues in fact by jury.

Supreme court exclusive jurisdiction.

Proceedings against public ministers.

ment of the goods or estate of the defendant by the original process, shall hold the goods or estate so attached, to answer the final judgment in the same manner as by the laws of such state they would have been holden to answer final judgment, had it been rendered by the court in which the suit commenced. And if in any action commenced in a state court, the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, shall state to the court and make affidavit if they require it, that he claims and shall rely upon a right or title to the land, under a grant from a state other than that in which the suit is pending, and produce the original grant or an exemplification of it, except where the loss of public records shall put it out of his power; and shall move that the adverse party inform the court, whether he claims a right or title to the land under a grant from the state in which the suit is pending; the said adverse [party] shall give such information, or otherwise not be allowed to plead such grant, or give it in evidence upon the trial, and if he informs that he does claim under such grant, the party claiming under the grant first mentioned may then, on motion, remove the cause for trial to the next circuit court to be holden in such district, or if in the district of Maine, to the court next to be holden therein; or if in Kentucky district, to the district court next to be holden therein; but if he is the defendant, shall do it under the same regulations as in the before-mentioned case of the removal of a cause into such court by an alien; and neither party removing the cause, shall be allowed to plead or give evidence of any other title than that by him stated as aforesaid, as the ground of his claim; and the trial of issues in fact in the circuit courts shall, in all suits, except those of equity, and of admiralty, and maritime jurisdiction, be by jury. (a.)

Sec. 13. And be it further enacted, That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. (b.) And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul,

the defendant being entitled to the right to remove the cause under the law of the United States, on the facts of the case, (the judge of the State court could not legally prevent the removal;) the application for the removal having been made in proper form. It was the duty of the State court to proceed no further in the cause. *Gordon v. Longest*, 16 Peters, 97.

One great object in the establishment of the courts of the United States, and regulating their jurisdiction, was to have a tribunal in each State presumed to be free from local influence, and to which all who were non-residents or aliens, might resort for legal redress; and this object would be defeated if a judge in the exercise of any other than a legal discretion, may deny to the party entitled to it, a removal of his cause. *Idid*.

(a) The provisions of the laws of the United States relating to juries, and trials by jury are:—*Trial by jury*—act of September 24, 1789, chap. 20, sec. 10, sec. 12, sec. 16.—*Exemption from attending on juries*—act of May 7, 1800, chap. 46, sec. 4. *Choice of jurors and qualification of juries*—act of September 24, 1789, chap. 20, sec. 29; act of May 13, 1800; act of July 20, 1840; act of March 3, 1841, chap. 19. Expired as to juries in Pennsylvania. *Special jury* act of April 29, 1802, chap. 31, sec. 30. *Jury in criminal cases*—act of September 24, 1789, chap. 20, sec. 29; act of April 30, 1790, chap. 9. *Manner of summoning jurors*—act of September 24, 1789, sec. 29; act of April 29, 1802, chap. 31. *Jurymen de talibus*—act of September 24, 1789, chap. 20.

(b) As to cases in which States, or alleged States, are parties, the following cases are referred to: *The Cherokee Nation v. The State of Georgia*, 5 Peters, 1. *New Jersey v. The State of New York*, 5 Peters, 284. *Ex parte Juan Madrazo*, 7 Peters, 627. *The State of Rhode Island v. The State of Massachusetts*, 12 Peters, 657. *Cohens v. The State of Virginia*, 6 Wheat, 264; 5 Cond. Rep. 90. *New York v. Connecticut*, 4 Dall. 3. *Fowler v. Lindsay et al.*, 3 Dall. 411.



or vice consul, shall be a party. (a) And the trial of issues in fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for; (b) and shall have power to issue writs of prohibition (c) to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of *mandamus*, (d) in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

SEC. 14. And be it further enacted, That all the before-mentioned courts of the United States, shall have power to issue writs of *scire facias*, *habeas corpus*, (e) and all other writs not specially provided for

Sup. Court
appellate juris-
diction.

Writs of Pro-
hibition.

Of Mandamus.

Courts may
issue writs of *scire facias*, *habeas corpus*, &c.

(a) The United States v. Ortega, 11 Wheat. 467; 6 Cond. Rep. 394. Davis v. Packard, 6 Peters, 41. (b) As to the appellate jurisdiction of the Supreme Court, see the cases collected in Peters's Digest, "Supreme Court," "Appellate Jurisdiction of the Supreme Court," and the following cases: The United States v. Goodwin, 7 Cranch, 108; 2 Cond. Rep. 434. Wiscart v. Dauchy, 3 Dall. 321; 1 Cond. Rep. 144. United States v. Moore, 3 Cranch, 159; 1 Cond. Rep. 430. Ovington v. Norwood's Lessee, 5 Cranch, 244; 2 Cond. Rep. 275. Martin v. Hunter's Lessee, 1 Wheat. 304; 3 Cond. Rep. 575. Gordon v. Caldwell, 3 Cranch, 268; 1 Cond. Rep. 624. Ex parte Kearney, 7 Wheat. 38; 5 Cond. Rep. 226. Smith v. The State of Maryland, 6 Cranch, 286; 2 Cond. Rep. 377. Inglee v. Coolidge, 2 Wheat. 363; 4 Cond. Rep. 155. Nicholls et al. v. Hodges Ex'ors, 1 Peters, 652. Buel et al. v. Van Ness, 8 Wheat. 312; 5 Cond. Rep. 445. Miller v. Nicholls, 4 Wheat. 311; 4 Cond. Rep. 465. Matthews v. Zane et al., 7 Wheat. 164; 5 Cond. Rep. 265. McCluney v. Silliman, 6 Wheat. 598; 5 Cond. Rep. 197. Houston v. Moore, 3 Wheat. 433; 3 Cond. Rep. 288. Montgomery v. Hernandez et al., 12 Wheat. 129; 6 Cond. Rep. 475. Cohens v. Virginia, 6 Wheat. 264; 5 Cond. Rep. 90. Gibbons v. Ogden, 6 Wheat. 448; 5 Cond. Rep. 134. Weston et al. v. The City Council of Charleston, 2 Peters, 449. Hickie v. Starke et al., 1 Peters, 94. Satterlee v. Mathewson, 2 Peters, 330. McBride v. Hoey, 11 Peters, 167. Ross v. Barland et al., 1 Peters, 655. The City of New Orleans v. De Armas, 9 Peters, 224. Crowell v. Randell, 10 Peters, 368. Williams v. Norris, 12 Wheat. 117; 6 Cond. Rep. 462. Meard v. Anpasia, 5 Peters, 505. Worcester v. The State of Georgia, 6 Peters, 515. The United States v. Moore, 3 Cranch, 159; 1 Cond. Rep. 430.

(c) Prohibition. Where the District Court of the United States has no jurisdiction of a cause brought before it, a prohibition will be issued from the Supreme Court to prevent proceedings. The United States v. Judge Peters, 3 Dall. 121; 1 Cond. Rep. 60.

(d) Mandamus. The following cases have been decided on the power of the Supreme Court to issue a mandamus. Marbury v. Madison, 1 Cranch, 137; 1 Cond. Rep. 267. McCluney v. Silliman, 2 Wheat. 389; 4 Cond. Rep. 162. United States v. Lawrence, 3 Dall. 42; 1 Cond. Rep. 19. United States v. Peters, 3 Dall. 121; 1 Cond. Rep. 60. Ex parte Burr, 9 Wheat. 529; 5 Cond. Rep. 660. Parker v. The Judges of the Circuit Court of Maryland, 12 Wheat. 581; 6 Cond. Rep. 844. Ex parte Roberts et al., 6 Peters, 216. Ex parte Darnport, 6 Peters, 661. Ex parte Bradstreet, 12 Peters, 174; 7 Peters, 634; 8 Peters, 583. Life and Fire Ins. Comp. of New York v. Wilson's heirs, 8 Peters, 291.

On a mandamus a superior court will never direct in what manner the discretion of the inferior tribunal shall be exercised; but they will, in a proper case, require an inferior court to decide. *Ibid.* Life and Fire Ins. Comp. of New York v. Adams, 8 Peters, 571. Ex parte Story, 12 Peters, 339. Ex parte Jesse Hoyt, collector, &c., 13 Peters, 278.

A writ of mandamus is not a proper process to correct an erroneous judgment or decree rendered in an inferior court. This is a matter which is properly examinable on a writ of error, or an appeal to a proper appellate tribunal. *Ibid.*

Writs of mandamus from the Circuit Courts of the United States. A Circuit Court of the United States has power to issue a mandamus to a collector, commanding him to grant a clearance. Gilchrist et al. v. Collector of Charleston, 1 Hall's Admiralty Law Journal, 423.

The power of the Circuit Court to issue the writ of mandamus is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. McIntire v. Wood, 7 Cranch, 504; 2 Cond. Rep. 588.

The Circuit Courts of the United States have no power to issue writs of mandamus after the practice of the King's Bench; but only where they are necessary for the exercise of their jurisdiction. Smith v. Jackson, Prince's C. C. R. 433.

(e) Habeas corpus. Ex parte Burford, 3 Cranch, 448; 1 Cond. Rep. 594; Ex parte Bollman, 4 Cranch, 75; 2 Cond. Rep. 33.

The writ of habeas corpus does not lie to bring up a person confined in the prison bounds upon a *capias ad satisfaciendum*, issued in a civil suit. Ex parte Wilson, 6 Cranch, 52; 2 Cond. Rep. 300. Ex parte Kearney, 7 Wheat. 38; 5 Cond. Rep. 226.

The power of the Supreme Court to award writs of habeas corpus is conferred expressly on the court by the 14th section of the judicial act, and has been repeatedly exercised. No doubt exists respecting the power. No law of the United States prescribes the cases in which this great writ shall be issued, nor the power of the court over the party brought up by it. The term used in the constitution is one which is well understood, and the judicial act authorizes the court, and all other courts of the United States and the judges thereof to issue the writ "for the purpose of inquiring into the cause of commitment." Ex parte Tobias Watkins, 9 Peters, 201.

As the jurisdiction of the Supreme Court is appellate, it must be shown to the court that the court has power to award a habeas corpus, before one will be granted. Ex parte Milburn, 9 Peters, 704.

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Act of 1793, ch. 22; act of 1807, ch. 13; act of 1818, ch. 83; act of Feb. 1819; act of May 20, 1826, ch. 134.
Limitation of writs of habeas corpus.

Parties shall produce books and writings.

Suits in equity limited.

by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—*Provided*, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

SEC. 15. *And be it further enacted*, That all the said courts of the United States, shall have power in the trial of actions at law, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively, on motion, to give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively on motion as aforesaid, to give judgment against him or her by default.(a)

SEC. 16. *And be it further enacted*, That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law.(b)

The act of Congress authorizing the writ of *habeas corpus* to be issued "for the purpose of inquiring into the cause of commitment," applies as well to cases of commitment under civil as those of criminal process. See Chief Justice Marshall, 2 Brocken, C. C. R. 447. *Ex parte Cabrera*, 1 Wash. C. C. R. 232. *United States v. French*, 1 Gallis. C. C. R. 2. *Holmes v. Jennison*, Governor of the State of Vermont, 14 Peters, 540.

(a) It is sufficient for one party to suggest that the other is in possession of a paper, which he has, under the act of Congress, given him notice to produce at the trial, without offering other proof of the fact; and the party so called upon must discharge himself of the consequences of not producing it, by affidavit or other proof that he has it not in his power to produce it. *Hylton v. Brown*, 1 Wash. C. C. R. 298.

The court will not, upon a notice of the defendant to the plaintiff to produce a title paper to the land in dispute, which is merely to defeat the plaintiff's title, compel him to do so; unless the defendant first shows title to the land. Merely showing a right of possession is not sufficient to entitle him to the aid of a court of chancery, or of the Supreme Court, to compel a discovery of papers which are merely to defeat the plaintiff's title without strengthening the defendant's. It is sufficient, in order to entitle him to call for papers to show the title to the land, although none is shown in the papers. *Ibid*.

Where one party in a cause wishes the production of papers supposed to be in the possession of the other, he must give notice to produce them: if not produced, he may give inferior evidence of their contents. But if it is his intention to nonsuit the plaintiff, or if the plaintiff requiring the papers means to obtain a judgment by default, under the 15th section of the judicial act, he is bound to give the opposite party notice that he means to move the court for an order upon him to produce the papers, or on a failure so to do, to award a nonsuit or judgment, as the case may be. *Bas v. Steele*, 3 Wash. C. C. R. 381.

No advantage can be taken of the non-production of papers, unless ground is laid for presuming that the papers were, at the time notice was given, in the possession or power of the party to whom notice was given, and that they were pertinent to the issue. In either of the cases, the party to whom notice was given may be required to prove, by his own oath, that the papers are not in his possession or power; which oath may be met by contrary proof according to the rules of equity. *Ibid*.

To entitle the defendant to nonsuit the plaintiff for not obtaining papers which he was noticed to produce, the defendant must first obtain an order of the court, under a rule that they should be produced. But this order need not be absolute when moved for, but may be nisi, unless cause be shown at the trial. *Dunham v. Riley*, 4 Wash. C. C. R. 126.

Notice to the opposite party to produce on the trial all letters in his possession, relating to monies received by him under the award of the commissioners under the Florida treaty, is sufficiently specific as they described their subject matter. If to such notice the party answer on oath that he has not a particular letter in his possession, and after diligent search could find none such, it is sufficient to prevent the offering of secondary proof of its contents. The party cannot be asked, or compelled to answer whether he ever had such a letter in his possession. *Vasse v. Mifflin*, 4 Wash. C. C. R. 519.

(b) The equity jurisdiction of the courts of the United States is independent of the local law of any State, and is the same in nature and extent as the equity jurisdiction of England from which it is derived. Therefore it is no objection to this jurisdiction, that there is a remedy under the local law. *Gordon v. Hobart*, 2 Sumner's C. C. R. 401.

If a case is cognizable at common law, the defendant has a right of trial by jury, and a suit upon it cannot be sustained in equity. *Baker v. Biddle*, 1 Baldwin's C. C. R. 405.



SEC. 17. *And be it further enacted*, That all the said courts of the United States shall have power to grant new trials, in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law; (a) and shall have power to impose and administer all necessary oaths or affirmations, and to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or bearing before the same; (b) and to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States.

Courts may grant new trials.

Act of March 2, 1831, ch. 99.

SEC. 18. *And be it further enacted*, That when in a circuit court, judgment upon a verdict in a civil action shall be entered, execution may on motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as they may judge proper, be stayed forty-two days from the time of entering judgment, to give time to file in the clerk's office of said court, a petition for a new trial. And if such petition be there filed within said term of forty-two days, with a certificate thereon from either of the judges of such court, that he allows the same to be filed, which certificate he may make or refuse at his discretion, execution shall of course be further stayed to the next session of said court. (c) And if a new trial be granted, the former judgment shall be thereby rendered void.

Execution may be stayed on conditions.

SEC. 19. *And be it further enacted*, That it shall be the duty of circuit courts, in causes in equity and of admiralty and maritime jurisdiction, to cause the facts on which they found their sentence or decree, fully to appear upon the record either from the pleadings and decree itself, or a state of the case agreed by the parties, or their counsel, or if they disagree by a stating of the case by the court.

Facts to appear on record.

Altered by act of March 3, 1803, chap. 40.

SEC. 20. *And be it further enacted*, That where in a circuit court, a plaintiff in an action, originally brought there, or a petitioner in equity, other than the United States, recovers less than the sum or value of five hundred dollars, or a libellant, upon his own appeal, less than the sum or value of three hundred dollars, he shall not be allowed, but at the discretion of the court, may be adjudged to pay costs.

Costs not allowed unless 500 dollars recovered.

SEC. 21. *And be it further enacted*, That from final decrees in a district court in causes of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of three hundred dollars, exclusive of costs, an appeal shall be allowed to the next circuit court,

Appeals from the district to the circuit court where matter in dispute exceeds 300 dollars.

There cannot be concurrent jurisdiction at law and equity, where the right and remedy are the same; but equity may proceed in aid of the remedy at law, by incidental and auxiliary relief; if the remedy at law is complete. Its jurisdiction is special, limited and defined; not as in England, where it depends on usage. *Ibid.*

The 18th section of the judiciary law is a declaratory act settling the law as to cases of equity jurisdiction, in the nature of a proviso, limitation or exception to its exercise. If the plaintiff have a plain, adequate and complete remedy at law, the case is not a suit in equity, under the constitution, or the judiciary act. *Ibid.*

Though the rules and principles established in English Chancery at the revolution, are adopted in the federal courts, the changes introduced there since, are not followed here; especially in matters of jurisdiction, as to which the 18th section of the act of 1789 is imperative. *Ibid.*

(a) New trials. *Calder v. Bull and Wife*, 5 Dall. 306; 1 Cond. Rep. 172. *Arnold v. Jones*, Bee's Rep. 104.

(b) Contempt of court. The courts of the United States have no common law jurisdiction of crimes against the United States. But independent of statutes, the courts of the United States have power to fine for contempts, and imprison for contumacy, and to enforce obedience to their orders, &c. *The United States v. Hudson et al.*, 7 Cranch, 32; 2 Cond. Rep. 405.

By an act passed March 2, 1831, chap. 99, it is enacted, that the power of the courts of the United States to punish for contempts shall not extend to any cases, except to misbehaviour in the presence of the court, or so near to the court as to obstruct the administration of justice, or the misbehaviour of the officers of the court in their official transactions, and disobedience or resistance by any officer of the court, party, juror, witness or any person to any writ, process, order or decree of the court. Indictments may be presented against persons impeding the proceedings of the court, &c. See the statute.

(c) Execution. The 14th section of the Judiciary act of September 24, 1789, chap. 20, authorizes the courts of the United States to issue writs of execution upon judgments which have been rendered. This section provides only for the issuing of the writ, and directs no mode of proceeding by the officer obeying its command. *Bank of the United States v. Halstead*, 10 Wheat. 51; 6 Cond. Rep. 22.

Altered by the 2d section of the act of March 3, 1803, chap. 40. [Obsolete.]

Final decrees re-examined above 50 dollars.

Altered by the 2d section of the act of March 3, 1803, chap. 40.

And suits in equity, exceeding 2000 dollars in value.

to be held in such district. *Provided nevertheless*, That all such appeals from final decrees as aforesaid, from the district court of Maine, shall be made to the circuit court, next to be holden after each appeal in the district of Massachusetts.

SEC. 22. *And be it further enacted*, That final decrees and judgments in civil actions in a district court, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, may be re-examined, and reversed or affirmed in a circuit court, holden in the same district, upon a writ of error, whereto shall be annexed and returned therewith at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and prayer for reversal, with a citation to the adverse party, signed by the judge of such district court, or a justice of the Supreme Court, the adverse party having at least twenty days' notice. (a) And upon a like process, may final judgments and decrees in civil actions, and suits in equity in a circuit court, brought there by original process, or removed there from courts of the several States, or removed there by appeal from a district court where the matter in dispute exceeds the sum or value of two thousand dollars, exclusive of costs, be re-examined and reversed or affirmed in the Supreme Court, the citation being in such case signed by a judge of such circuit court, or justice of the Supreme Court, and the adverse party having at least thirty days' notice. (b) But there shall be no rever-

(a) The rules, regulations and restrictions contained in the 21st and 22d sections of the judiciary act of 1789, respecting the time within which a writ of error shall be brought, and in what instances it shall operate as a supersedeas, the citation to the opposite party, the security to be given by the plaintiff in error, and the restrictions on the appellate court as to reversals in certain enumerated cases, are applicable to the act of 1803, and are to be substantially observed; except that where the appeal is prayed for at the same time when the decree or sentence is pronounced, a citation is not necessary. *The San Pedro*, 2 Wheat. 132; 4 Cond. Rep. 85.

By the 2d section of the act of March 3, 1803, chap. 40, appeals are allowed from all final judgments or decrees in any of the District courts, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars. Appeals from the Circuit Court to the Supreme Court are allowed when the sum or value, exclusive of costs exceeds \$2000. This section repeals so much of the 19th and 20th sections of the act of 1789, as comes within the purview of those provisions.

By the provisions of the act of April 2, 1816, chap. 39, appeals from the Circuit Court of the United States for the District of Columbia, are allowed when the matter in dispute in the cause exceeds \$1000, exclusive of costs.

(b) The following cases have been decided on the questions which have arisen as to the value in controversy, in a case removed by writ of error or appeal.

The verdict and judgment do not ascertain the matter in dispute between the parties. To determine this, recurrence must be had to the original controversy; to the matter in dispute when the action was instituted. *Wilson v. Daniel*, 3 Dall. 401; 1 Cond. Rep. 185.

Where the value of the matter in dispute did not appear in the record, in a case brought by writ of error, the court allowed affidavits to be taken to prove the same, on notice to the opposite party. The writ of error not to be a supersedeas. *Course v. Stead's Executors*, 4 Dall. 22; 1 Cond. Rep. 217; 4 Dall. 20; 1 Cond. Rep. 215.

The Supreme Court will permit viva voce testimony to be given of the value of the matter in dispute, in a case brought up by a writ of error or by appeal. *The United States v. The Brig Union et al.*, 4 Cranch, 216; 2 Cond. Rep. 91.

The plaintiff below claimed more than \$2000 in his declaration, but obtained a verdict for a less sum. The appellate jurisdiction of the Supreme Court depends on the sum or value in dispute between the parties, as the case stands on the writ of error in the Supreme Court; not on that which was in dispute in the Circuit Court. If the writ of error be brought by the plaintiff below, then the sum the declaration shows to be due may still be recovered, should the judgment for a smaller sum be reversed; and consequently the whole sum claimed is in dispute. *Smith v. Honey*, 3 Peters, 469; *Gordon v. Ogden*, 3 Peters, 33.

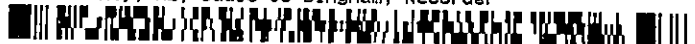
In cases where the demand is not for money, and the nature of the action does not require the value of the thing to be stated in the declaration, the practice of the courts of the United States has been to allow the value to be given in evidence. *Ex parte Bradstreet*, 7 Peters, 634.

The onus probandi of the amount in controversy, to establish the jurisdiction of the Supreme Court in a case brought before it by writ of error, is upon the party seeking to obtain the revision of the case. He may prove that the value exceeds \$2000, exclusive of costs. *Hagan v. Foison*, 10 Peters, 150.

The Supreme Court has no jurisdiction in a case in which separate decrees have been entered in the Circuit Court for the wages of seamen, the decree in no one case amounting to \$2000, although the amount of the several decrees exceed that sum, and the seamen in each case claimed under the same contract. *Oliver v. Alexander*, 6 Peters, 143. See *Scott v. Lunt's Admrs*, 6 Peters, 349.

The Supreme Court will not compel the hearing of a cause unless the citation be served thirty days before the first day of the term. *Welsh v. Mandeville*, 5 Cranch, 321; 2 Cond. Rep. 268.

A citation must accompany the writ of error. *Lloyd v. Alexander*, 1 Cranch, 365; 1 Cond. Rep. 334. When an appeal is prayed during the session of the court, a citation to the appellee is not necessary. *Riley, appellant, v. Lamar et al.*, 2 Cranch, 344; 1 Cond. Rep. 419.



sal in either court on such writ of error for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or such plea to a petition or bill in equity, as is in the nature of a demurrer, or for any error in fact. And writs of error shall not be brought but within five years after rendering or passing the judgment or decree complained of, or in case the person entitled to such writ of error be an infant, *feme covert*, *non compos mentis*, or imprisoned, then within five years as aforesaid, exclusive of the time of such disability. (a) And every justice or judge signing a citation on any writ of error as aforesaid, shall take good and sufficient security, that the plaintiff in error shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good. (b)

SEC. 23. *And be it further enacted*, That a writ of error as aforesaid shall be a supersedeas and stay execution in cases only where the writ of error is served, by a copy thereof being lodged for the adverse party in the clerk's office where the record remains, within ten days, Sundays exclusive, after rendering the judgment or passing the decree complained of. Until the expiration of which term of ten days, executions shall not issue in any case where a writ of error may be a supersedeas; and whereupon such writ of error the Supreme or a circuit court shall affirm a judgment or decree, they shall adjudge or decree to the respondent in error just damages for his delay, and single or double costs at their discretion. (c)

SEC. 24. *And be it further enacted*, That when a judgment or decree shall be reversed in a circuit court, such court shall proceed to render such judgment or pass such decree as the district court should have rendered or passed; and the Supreme Court shall do the same on reversals therein, except where the reversal is in favour of the plaintiff, or petitioner in the original suit, and the damages to be assessed, or matter to be decreed, are uncertain, in which case they shall remand the cause for a final decision. And the Supreme Court shall not issue execution in causes that are removed before them by writs of error, but shall send a special mandate to the circuit court to award execution thereupon.

SEC. 25. *And be it further enacted*, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, (d) or where is drawn in question the construction of any

Writs of error limited.

Plaintiff to give security. Act of December 12, 1794, chap. 3.

Writ of error a supersedeas.

Judgment or decree reversed.

Supreme court not to issue execution but mandate.

Cases in which judgment and decrees of the highest court of a state may be examined by the supreme court, on writ of error.

(a) An appeal under the judiciary acts of 1789 and 1803, was prayed for and allowed within five years; held to be valid, although the security was not given within five years. The mode of taking the security and the time of perfecting it, are exclusively within the control of the court below. *Tho Dos Hermanos*, 10 Wheat. 306; 6 Cond. Rep. 109.

(b) By the act of December 12, 1794, chap. 3, the security required to be taken on signing a citation on any writ of error which shall not be a supersedeas, and stay execution, shall only be for an amount which will be sufficient to answer for costs.

(c) Supersedeas. The Supreme Court will not quash an execution issued by the court below to enforce its decree, pending a writ of error, if the writ be not a supersedeas to the decree. *Wallen v. Williams*, 7 Cranch, 278; 2 Cond. Rep. 491.

(d) In delivering the opinion of the Supreme Court in the case of *Fisher v. Cockrell*, 5 Peters, 248, Mr. Chief Justice Marshall said: "In the argument the court has been admonished of the jealousy with which the States of the Union view the revising power entrusted by the constitution and laws to this tribunal. To observations of this character the answer uniformly has been that the course of the judicial department is marked out by law. We must tread the direct and narrow path prescribed for us. As this court has never grasped at ungranted jurisdiction, so it never will, we trust, shrink from that which is conferred upon it."

The appellate power of the Supreme Court of the United States extends to cases pending in the State courts; and the 25th section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases by writ of error, is supported by the letter and spirit of the constitution. *Martin v. Hunter's Lessee*, 1 Wheat. 304; 3 Cond. Rep. 675.

Under the 25th section of the judiciary act of 1789, where the construction of any clause in the con-

II

Proceedings
on reversal.

No writs of
error but as
above mention-
ed.

clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before men-

stitution or any statute of the United States is drawn in question, in any suit in a State court, the decision must be against the title or right set up by the party under such clause in the constitution or statute; otherwise the Supreme Court has no appellate jurisdiction in the case. It is not sufficient that the construction of the statute was drawn in question, and that the decision was against the title. It must appear that the title set up depended on the statute. *Williams v. Norris*, 12 Wheat. 117; 6 Cond. Rep. 462.

If the construction or validity of a treaty of the United States is drawn in question in the State courts, and the decision is against its validity, or against the title set up by either party under the treaty, the Supreme Court has jurisdiction to ascertain that title, and to determine its legal meaning; and is not confined to the abstract construction of the treaty itself. *Ibid.*

The 2d article of the constitution of the United States enables the Supreme Court to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such form that the judicial power is capable of acting upon it. That power is capable of acting only when the subject is submitted to it by a party who asserts his right in the form prescribed by law. It then becomes a case. *Osborn v. The Bank of the United States*, 9 Wheat. 738; 5 Cond. Rep. 741.

The Supreme Court has no jurisdiction under the 25th section of the act of 1789, unless the judgment or decree of the State court be a final judgment or decree. A judgment reversing that of an inferior court, and awarding a scire facias de novo, is not a final judgment. *Houston v. Moore*, 8 Wheat. 433; 4 Cond. Rep. 286.

The Supreme Court has no appellate jurisdiction under the 25th section of the judiciary act, unless the right, title, privilege, or exemption under a statute or commission of the United States be specially set up by the party claiming it in the State court, and the decision be against the same. *Montgomery v. Hernandez*, 12 Wheat. 129; 6 Cond. Rep. 475.

It is no objection to the exercise of the appellate jurisdiction under this section, that one party is a State, and the other a citizen of that State. *Cohens v. The State of Virginia*, 6 Wheat. 264; 5 Cond. Rep. 90.

In order to bring a case for a writ of error or an appeal to the Supreme Court from the highest court of a State within the 25th section of the judiciary act, it must appear on the face of the record: 1. That some of the questions stated in that section did arise in the State court. 2. That the question was decided in the State court as required in the section.

It is not necessary that the question shall appear in the record to have been raised, and the decision made in direct and positive terms, *ipsissimis verbis*; but it is sufficient if it appears by clear and necessary intendment that the question must have been raised, and must have been decided, in order to induce the judgment. It is not sufficient to show that a question might have arisen and been applicable to the case, unless it is further shown, on the record, that it did arise and was applied by the State Court to the case. *Crowell v. Randall*, 10 Peters, 368. See also *Williams v. Norris*, 12 Wheat. 117; 6 Cond. Rep. 462. *Jackson v. Lamphire*, 3 Peters, 280. *Menard v. Aspasia*, 5 Peters, 605. *Fisher v. Cockrell*, 5 Peters, 248. *Golston v. Hoyt*, 3 Wheat. 246; 4 Cond. Rep. 244. *Gordon v. Caldealeugh et al.*, 3 Cranch, 268; 1 Cond. Rep. 524. *Owings v. Norwood's Lessee*, 5 Cranch, 344; 2 Cond. Rep. 276. *Buel et al. v. Van Ness*, 8 Wheat. 312; 5 Cond. Rep. 445. *Miller v. Nicholls*, 4 Wheat. 311; 4 Cond. Rep. 465. *Matthews v. Zane et al.*, 7 Wheat. 164; 5 Cond. Rep. 265. *Gibbons v. Ogden*, 6 Wheat. 448; 5 Cond. Rep. 134.

Under the 25th section of the judiciary act of 1789, three things are necessary to give the Supreme Court jurisdiction of a case brought up by writ of error or appeal: 1. The validity of a statute of the United States, or of authority exercised under a State, must be drawn in question. 2. It must be drawn in question on the ground that it is repugnant to the constitution, treaties and laws of the United States. 3. The decision of the State court must be in favour of its validity. The Commonwealth Bank of Kentucky *v. Griffith et al.*, 14 Peters, 66. See also *Pollard's heirs v. Kibbe*, 14 Peters, 363. *McCluny v. Siliman*, 6 Wheat. 598; 5 Cond. Rep. 197. *Weston et al. v. The City Council of Charleston*, 2 Peters, 448. *Hickie v. Starke et al.*, 1 Peters, 94. *Satterlee v. Matthewson*, 2 Peters, 380. *Wilson et al. v. The Blackbird Creek Marsh Association*, 2 Peters, 245. *Harriet v. Dennie*, 3 Peters, 292. *McBride v. Hoey*, 11 Peters, 167. *Winn's heirs v. Jackson et al.*, 12 Wheat. 135; 6 Cond. Rep. 479. *City of New Orleans v. De Atmas*, 9 Peters, 224. *Davis v. Packard*, 6 Peters, 41.



tioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute. (a)

SEC. 26. *And be it further enacted*, That in all causes brought before either of the courts of the United States to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other speciality, where the forfeiture, breach or non-performance shall appear, by the default or confession of the defendant, or upon demurrer, the court before whom the action is, shall render judgment therein for the plaintiff to recover so much as is due according to equity. And when the sum for which judgment should be rendered is uncertain, the same shall, if either of the parties request it, be assessed by a jury.

SEC. 27. *And be it further enacted*, That a marshal shall be appointed in and for each district for the term of four years, but shall be removable from office at pleasure, whose duty it shall be to attend the district and circuit courts when sitting therein, and also the Supreme Court in the district in which that court shall sit. (b) And to execute throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty, and to appoint as there shall be occasion, one or more deputies, (c) who shall be removable from office by the judge of the district court, or the circuit court sitting within the district, at the pleasure of either; and before he enters on the duties of his office, he shall become bound for the faithful performance of the same, by himself and by his deputies before the judge of the district court to the United States, jointly and severally, with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by the district judge, in the sum of twenty thousand dollars, and shall take before said judge, as shall also his deputies, before they enter on the duties of their appointment, the following oath of office: "I, A. B., do solemnly swear or affirm, that I will faithfully execute all lawful precepts directed to the marshal of the district of _____ under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of _____, during my continuance in said office, and take only my lawful fees. So help me God."

SEC. 28. *And be it further enacted*, That in all causes wherein the marshal or his deputy shall be a party, the writs and precepts therein shall be directed to such disinterested person as the court, or any justice or judge thereof may appoint, and the person so appointed, is hereby authorized to execute and return the same. And in case of the death of any marshal, his deputy or deputies shall continue in office, unless otherwise specially removed; and shall execute the same in the name of the deceased, until another marshal shall be appointed and sworn: And the defaults or misfeasances in office of such deputy or deputies in the mean time, as well as before, shall be adjudged a breach of the condition of the bond given, as before directed, by the marshal who appointed

In cases of forfeiture the courts may give judgment according to equity.

Jury to assess damages when the sum is uncertain.

Marshal to be appointed.

Duration of office.

Act of May 15, 1820, ch. 102; 107, sec. 8.

Deputies removable by the district and circuit courts.

Sureties.

Oath of marshal, and of his deputies.

If marshal, or his deputy, a party to a suit, process to be directed to a person selected by the court.

Deputies to continue in office on the death of the marshal.

Defaults of deputies.

(a) *Williams v. Norris*, 12 Wheat. 117; 5 Cond. Rep. 463.

(b) A marshal is not removed by the appointment of a new one, until he receives notice of such appointment. All acts done by the marshal after the appointment of a new one, before notice, are good; but his acts subsequent to notice are void. *Wallace's C. C. R.* 119.

It is the duty of a marshal of a court of the United States to execute all process which may be placed in his hand, but he performs this duty at his peril, and under the guidance of law. He must, of course, exercise some judgment in the performance. Should he fail to obey the exigent of the writ without a legal excuse, or should he in its letter violate the rights of others, he is liable to the action of the injured party. *Life and Fire Ins. Comp. of New York v. Adams*, 9 Peters, 573.

(c) A marshal is liable on his official bond for the failure of his deputies to serve original process, but the measure of his liability is the extent of the injury received by the plaintiff, produced by his negligence. If the loss of the debt be the direct legal consequence of a failure to serve the process, the amount of the debt is the measure of the damages; but not so if otherwise. *The United States v. Moore's Adm'rs*, 2 Brocken. C. C. R. 317. See also *Jose v. Indiana*, 2 Gallis. C. C. R. 311. *Ex parte Jesse Hoyt*, collector, Sec., 13 Peters, 279.



Powers of the executor or administrator of deceased marshal.

Marshal's power after removal.

Trial of cases punishable with death to be had in county.

Jurors by lot. Act of May 13, 1800, ch. 61.

Writs of venire facias from clerk's office.

Juries de talibus, &c.

Mode of proof.

Act of April 29, 1802, ch. 31, § 25.

Depositions de bene esse.

them; and the executor or administrator of the deceased marshal shall have like remedy for the defaults and misfeasances in office of such deputy or deputies during such interval, as they would be entitled to if the marshal had continued in life and in the exercise of his said office, until his successor was appointed, and sworn or affirmed: And every marshal or his deputy when removed from office, or when the term for which the marshal is appointed shall expire, shall have power notwithstanding to execute all such precepts as may be in their hands respectively at the time of such removal or expiration of office; and the marshal shall be held answerable for the delivery to his successor of all prisoners which may be in his custody at the time of his removal, or when the term for which he is appointed shall expire, and for that purpose may retain such prisoners in his custody until his successor shall be appointed and qualified as the law directs. (a)

Sec. 29. *And be it further enacted*, That in cases punishable with death, the trial shall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence. (b) And jurors in all cases to serve in the courts of the United States shall be designated by lot or otherwise in each State respectively according to the mode of forming juries therein now practised, so far as the laws of the same shall render such designation practicable by the courts or marshals of the United States; and the jurors shall have the same qualifications as are requisite for jurors by the laws of the State of which they are citizens, to serve in the highest courts of law of such State, and shall be returned as there shall be occasion for them, from such parts of the district from time to time as the court shall direct, so as shall be most favourable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burthen the citizens of any part of the district with such services. And writs of *venire facias* when directed by the court shall issue from the clerk's office, and shall be served and returned by the marshal in his proper person, or by his deputy, or in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as the court shall specially appoint for that purpose, to whom they shall administer an oath or affirmation that he will truly and impartially serve and return such writ. And when from challenges or otherwise there shall not be a jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court where such defect of jurors shall happen, return jurymen *de talibus circumstantibus* sufficient to complete the pannel; and when the marshal or his deputy are disqualified as aforesaid, jurors may be returned by such disinterested person as the court shall appoint.

Sec. 30. *And be it further enacted*, That the mode of proof by oral testimony and examination of witnesses in open court shall be the same in all the courts of the United States, as well in the trial of causes in equity and of admiralty and maritime jurisdiction, as of actions at common law. And when the testimony of any person shall be necessary in any civil cause depending in any district in any court of the United States, who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial, or is ancient or very infirm, the deposition of such person may be taken *de bene esse* before any justice or judge of any of the courts of the United States,

(a) If a debtor committed to the State jail under process of the courts of the United States escapes, the marshal is not liable. *Randolph v. Donaldson*, 9 Cranch, 76; 3 Cond. Rep. 280.

(b) The Circuit Courts of the United States are bound to try all crimes committed within the district, which are duly presented before it; but not to try them in the county where they have been committed. *The United States v. Wilson and Porter*, Baldwin's C. C. R. 78.



or before any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States, not being of counsel or attorney to either of the parties, or interested in the event of the cause, provided that a notification from the magistrate before whom the deposition is to be taken to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, be first made out and served on the adverse party or his attorney as either may be nearest, if either is within one hundred miles of the place of such caption, allowing time for their attendance after notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel. (a) And in causes of admiralty and maritime jurisdiction, or other cases of seizure when a libel shall be filed, in which an adverse party is not named, and depositions of persons circumstanced as aforesaid shall be taken before a claim be put in, the like notification as aforesaid shall be given to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice if any given to the adverse party, be by him the said magistrate sealed up and directed to such court, and remain under his seal until opened in court. (b) And any person may be compelled to appear and depose as aforesaid in the same manner as to appear and testify in court. And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in which may be appealed from, if either party shall suggest to and satisfy the court that probably it will not be in his power to produce the witnesses there testifying before the circuit court should an appeal be had, and shall move that their testimony be taken down in writing, it shall be so done by the clerk of the court. (c) And

-Adverse party
to be notified.

Notice in admiralty
and maritime causes.

Agent notified.

Depositions
retained.

Persons may
be compelled to
appear and testify.
Appeal allowed.

(a) The following cases have been decided relating to depositions taken under the provisions of this act: That the deponent is a seaman on board a gun-boat in the harbour, and liable to be ordered to some other place, and not to be able to attend the court at the time of sitting, is not a sufficient reason for taking his deposition under the act of September 24, 1789, chap. 20.

If it appear on the face of the deposition taken under the act of Congress, that the officer taking the same, was authorized by the act, it is sufficient in the first instance, without any proof that he was such officer. *Ruggles v. Bucknor*, 1 Paine's C. C. R. 353.

Objections to the competency of the witness whose deposition is taken under the act of 1789, should be made at the time of taking the deposition, if the party attend, and the objections are known to him, in order that they may be removed: otherwise he will be presumed to waive them. *United States v. Hair-pencils*, 1 Paine's C. C. R. 400.

A deposition taken under the 30th section of the act of 1789 cannot be made on evidence, unless the judge before whom it was taken, certify that it was reduced to writing by himself, or by the witness in his presence. *Pettibone v. Derringer*, 4 Wash. C. C. R. 215. See *United States v. Smith*, 4 Day, 121. *North Carolina Cases*, 81.

The authority given by the act of 1789, to take depositions of witnesses in the absence of the opposite party, is in derogation of the rules of common law, and has always been construed strictly; and therefore it is necessary to establish that all the requisites have been complied with, before such testimony can be admitted. *Hell v. Morrison et al.*, 1 Peters, 351. *The Patapsco Ins. Comp. v. Southgate*, 3 Peters, 604. *The United States v. Coolidge*, 1 Gallis. C. C. R. 483. *Evans v. Hettick*, 3 Wash. C. C. R. 403. *Thomas and Henry v. The United States*, 1 Brocken. C. C. R. 367.

The provisions of the 30th section of the act of 1789, as to taking depositions, *de bene esse*, does not apply to cases pending in the Supreme Court, but only to cases in the Circuit and District Courts. *The Argo*, 2 Wheat. 267; 4 Cond. Rep. 119.

Where there is an attorney on record, notice must in all cases be given to him. *Ibid.*

The deposition of a person residing out of the State, and more than one hundred miles from the place of trial, cannot be read in evidence. *Bleeker v. Bond*, 3 Wash. C. C. R. 529. See *Buddicum v. Kirke*, 3 Cranch, 293; 1 Cond. Rep. 535.

(b) It is a fatal objection to a deposition taken under the 30th section of the act of 1789, that it was opened out of court. *Beale v. Thompson*, 3 Cranch, 70; 3 Cond. Rep. 35.

(c) Since the act of March 3, 1803, chap. 40, in admiralty as well as in equity cases carried up to the

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Act of March
3, 1803, ch. 40.

Depositions
used in case of
sickness, death,
&c.

Dedimus po-
testatem as
usual.

Executor or
administrator
may prosecute
and defend.

Neglect of
executor or ad-
ministrator to
become a party
to the suit,
judgment to be
rendered.

Executor and
administrator
may have con-
tinuance.

Two plaintiffs.
Surviving
plaintiff may
continue suit.

if an appeal be had, such testimony may be used on the trial of the same, if it shall appear to the satisfaction of the court which shall try the appeal, that the witnesses are then dead or gone out of the United States, or to a greater distance than as aforesaid from the place where the court is sitting, or that by reason of age, sickness, bodily infirmity or imprisonment, they are unable to travel and appear at court, but not otherwise. And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause. *Provided*, That nothing herein shall be construed to prevent any court of the United States from granting a *dedimus potestatem* to take depositions according to common usage, when it may be necessary to prevent a failure or delay of justice, (a) which power they shall severally possess, nor to extend to depositions taken in *perpetuum rei memoriam*, which if they relate to matters that may be cognizable in any court of the United States, a circuit court on application thereto made as a court of equity, may, according to the usages in chancery direct to be taken.

Sec. 31. *And be it* [further] enacted, That where any suit shall be depending in any court of the United States, and either of the parties shall die before final judgment, the executor or administrator of such deceased party who was plaintiff, petitioner, or defendant, in case the cause of action doth by law survive, shall have full power to prosecute or defend any such suit or action until final judgment; and the defendant or defendants are hereby obliged to answer thereto accordingly; and the court before whom such cause may be depending, is hereby empowered and directed to hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require. And if such executor or administrator having been duly served with a *scire facias* from the office of the clerk of the court where such suit is depending, twenty days beforehand, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit. (b) And the executor or administrator who shall become a party as aforesaid, shall, upon motion to the court where the suit is depending, be entitled to a continuance of the same until the next term of the said court. And if there be two or more plaintiffs or defendants, and one or more of them shall die, if the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants. (c)

Supreme Court by appeal, the evidence goes with the cause, and it must consequently be in writing. 1 Gallis. C. C. R. 25; 1 Sumner's C. C. R. 328.

(a) When a foreign government refuses to suffer the commission to be executed within its jurisdiction, the Circuit Court may issue letters rogatory for the purpose of obtaining testimony according to the forms and practice of the civil law. Nelson et al. v. The United States, Peters' C. C. R. 250. See *Buddicum v. Kirke*, 3 Cranch, 293; 1 Cond. Rep. 535.

Depositions taken according to the proviso in the 30th section of the judiciary act of 1789, under a *dedimus potestatem*, according to common usage, when it may be necessary to prevent a failure or delay of justice, are, under no circumstances, to be considered as taken *de bene esse*. *Sergeant's Lessee v. Biddle*, 4 Wheat. 508; 4 Cond. Rep. 522.

(b) This statute embraces all cases of death before final judgment, and of course is more extensive than the 17 Car. 2, and 8 and 9 W. 3. The death may happen before or after plea pleaded, before or after issue joined, before or after verdict, or before or after interlocutory judgment; and in all these cases the proceedings are to be exactly as if the executor or administrator were a voluntary party to the suit. *Hatch v. Eustis*, 1 Gallis. C. C. R. 160.

(c) In real and personal actions at common law, the death of the parties before judgment abates the suit, and it requires the aid of some statutory provision to enable the suit to be prosecuted by or against the personal representatives of the deceased, where the cause of action survives. This is effected by the 31st section of the judiciary act of 1789, chap. 20. *Green v. Watkins*, 6 Wheat. 260; 5 Cond. Rep. 87.

In real actions the death of either party before judgment, abates the suit. The 31st section of the judiciary act of 1789, which enables the action to be prosecuted by or against the representatives of the



Sec. 32. *And be it further enacted*, That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe. (a)

Sec. 33. *And be it further enacted*, That for any crime or offence against the United States, the offender may, by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found agreeably to the usual mode of process against offenders in such state, and at the expense of the United States, be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offence. (b) And copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case; which recognizances the magistrate before whom the examination shall be, may require on pain of imprisonment. And if such commitment of the offender, or the witnesses shall be in a district other than that in which the offence is to be tried, it shall be the duty of the judge of that district where the delinquent is imprisoned, seasonably to issue, and of the marshal of the same district to execute, a warrant for the removal of the offender, and the witnesses, or either of them, as the case may be, to the district in which the trial is to be had. And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which cases it shall not be admitted but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence, and the usages of law. And if a person committed by a justice of the supreme or a judge of a district court for an offence not punishable with death, shall afterwards procure bail, and there be no judge

Writs shall not abate for defect of form.

Exceptions.

Courts may amend imperfections.

Criminals against U. S. arrested by any justice of the peace.

Act of March 2, 1793, ch. 22.

Act of July 18, 1798, ch. 83.

Recognizance to be returned to the clerk's office.

Offender may be removed by warrant.

Bail admitted.

Bail, how taken.

deceased, when the cause of action survives, is clearly confined to personal actions. *Macker's heirs v. Thomas*, 7 Wheat. 530; 5 Cond. Rep. 334.

(c) The 32d section of the act of 1789, allowing amendments, is sufficiently comprehensive to embrace causes of appellate as well as original jurisdiction; and there is nothing in the nature of an appellate jurisdiction, proceeding according to the common law, which forbids the granting of amendments. 1 Gallis. C. C. R. 29.

If the amendment is made in the Circuit Court, the cause is heard and adjudicated in that court, and upon appeal by the Supreme Court on the new allegation. But if the amendment is allowed by the Supreme Court, the cause is remanded to the Circuit Court, with directions to allow the amendment to be made. *The Mariana Flora*, 11 Wheat. 1; 6 Cond. Rep. 201.

By the provisions of the act of Congress a variance which is merely matter of form may be amended at any time. *Scull v. Biddle*, 2 Wash. C. C. R. 200. See *Smith v. Jackson*, 1 Paine's C. C. R. 488. *Ex parte Bradstreet*, 7 Peters, 834. *Randolph v. Barrett*, 16 Peters, 136. *Hozey v. Buchanan*, 16 Peters, 215. *Woodward v. Brown*, 13 Peters, 1.

(d) The Supreme Court of the United States has jurisdiction, under the constitution and laws of the United States, to bail a person committed for trial on a criminal charge by a district judge of the United States. *The United States v. Hamilton*, 3 Dall. 17.

The circumstances of the case must be very strong, which will, at any time, induce a court to admit a person to bail, who stands charged with high treason. *The United States v. Stewart*, 2 Dall. 343.

Laws of States
rules of deci-
sion.

Parties may
manage their
own cause.

Attorney of
the U. S. for
each district.

His duties.

Compensation.

of the United States in the district to take the same, it may be taken by any judge of the supreme or superior court of law of such state.

SEC. 34. *And be it further enacted*, That the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply. (a)

SEC. 35. *And be it further enacted*, That in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as a compensation for his

(a) The 34th section of the judiciary act of 1789, does not apply to the process and practice of the courts. It merely furnishes a decision, and is not intended to regulate the remedy. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

In construing the statutes of a State, infinite mischief would ensue, should the federal courts observe a different rule from that which has long been established in the State. *McKeen v. Delancy's Lessee*, 5 Cranch, 22; 2 Cond. Rep. 179.

In cases depending on the statutes of a State, and more especially in those respecting the titles to land, the federal courts adopt the construction of the State, where that construction is settled or can be ascertained. *Polk's Lessee v. Wendall*, 9 Cranch, 37; 3 Cond. Rep. 236.

The Supreme Court uniformly acts under a desire to conform its decisions to the State courts on their local law. *Mutual Assurance Society v. Watts*, 1 Wheat. 279; 3 Cond. Rep. 570.

The Supreme Court holds in the highest respect, decisions of State Courts upon local laws, forming rules of property. *Shipp et al. v. Miller's heirs*, 2 Wheat. 316; 4 Cond. Rep. 132.

When the construction of the statute of the State relates to real property, and has been settled by any judicial decision of the State where the land lies, the Supreme Court, upon the principles uniformly adopted by it, would recognize the decision as part of the local law. *Gardner v. Collins*, 2 Peters, 58.

In construing local statutes respecting real property, the courts of the Union are governed by the decisions of State tribunals. *Thatcher et al. v. Powell*, 6 Wheat. 119; 5 Cond. Rep. 28.

The courts of the United States, in cases depending on the laws of a particular State, will in general adopt the construction given by the courts of the State, to those laws. *Elmendorf v. Taylor*, 10 Wheat. 152; 6 Cond. Rep. 47.

Under the 34th section of the judiciary act of 1789, the acts of limitation of the several States where no special provision has been made by Congress, form rules of the decision in the courts of the United States; and the same effect is given to them as is given in the State courts. *McCluny v. Stillman*, 3 Peters, 270.

The statute laws of the States must furnish the rules of decision to the federal courts, as far as they comport with the laws of the United States, in all cases arising within the respective States; and a fixed and received construction of these respective statute laws in their own courts, makes a part of such statute law. *Shelby et al. v. Guy*, 11 Wheat. 361; 8 Cond. Rep. 345.

The Supreme Court adopts the local law of real property as ascertained by the decisions of State courts; whether those decisions are grounded on the construction of the statutes of the State, or from a part of the unwritten law of the State, which has become a fixed rule of property. *Jackson v. Chew*, 12 Wheat. 153; 6 Cond. Rep. 489.

Soon after the decision of a case in the Circuit Court for the district of Virginia, a case was decided in the court of appeals of the State, on which the question on the execution laws of Virginia was elaborately argued, and deliberately decided. The Supreme Court, according to its uniform course, adopts the construction of the act, which is made by the highest court of the State. *The United States v. Morrison*, 4 Peters, 124.

The Supreme Court has uniformly adopted the decisions of the State tribunals, respectively, in all cases where the decision of a State court has become a rule of property. *Green v. Neal*, 6 Peters, 291.

In all cases arising under the constitution and laws of the United States, the Supreme Court may exercise a revising power, and its decisions are final and obligatory on all other tribunals, State as well as federal. A State tribunal has a right to examine any such questions, and to determine thereon, but its decisions must conform to those of the Supreme Court, or the corrective power of that court may be exercised. But the case is very different when the question arises under a local law. The decision of this question by the highest tribunal of a State, should be considered as final by the Supreme Court; not because the State tribunal has power, in such a case, to bind the Supreme Court, but because, in the language of the court in *Shelby v. Guy*, 11 Wheat. 361, a fixed and received construction by a State, in its own courts, makes a part of the statute law. *Ibid.* See also *Smith v. Clapp*, 15 Peters, 125. *Watkins v. Holman et al.*, 16 Peters, 25. *Long v. Palmer*, 16 Peters, 65. *Golden v. Price*, 3 Wash. C. C. R. 213. *Campbell v. Claudiu*, Peters' C. C. R. 484. *Henderson and Wife v. Griffin*, 6 Peters, 151. *Coates' executrix v. Muse's adm'or.*, 1 Brocken. C. C. R. 539. *Parsons v. Bedford et al.*, 3 Peters, 433.



services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided. (a)

APPROVED, September 24, 1789.

Attorney General of the U. S.

Duties.

Act of May 29, 1830, ch. 153.

Compensation.

STATUTE I.

CHAP. XXI.—An Act to regulate Processes in the Courts of the United States.

Sept. 29, 1789.

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all writs and processes issuing from a supreme or a circuit court shall bear test of the chief justice of the supreme court, and if from a district court, shall bear test of the judge of such court, and shall be under the seal of the court from whence they issue; and signed by the clerk thereof. The seals of the supreme and circuit courts to be provided by the supreme court, and of the district courts, by the respective judges of the same.

Act of May 26, 1790, ch. 13.

Act of Feb. 18, 1791, ch. 8.

Writs to bear test of the Chief Justice.

To be under the seal of the Court from which they issue.

Act of May 8, 1792, ch. 36.

Act of May 19, 1828, ch. 68.

Forms of writs and executions

SEC. 2. And be it further enacted, That until further provision shall be made, and except where by this act or other statutes of the United States is otherwise provided, the forms of writs and executions, except their style, and modes of process and rates of fees, except fees to judges, in the circuit and district courts, in suits at common law, shall be the same in each state respectively as are now used or allowed in the supreme courts of the same. (b) And the forms and modes of proceedings in

(a) The acts relating to the compensation of the Attorney General of the United States are: Act of March 2, 1797; act of March 2, 1799, chap. 39; act of February 20, 1804, chap. 12; act of February 20, 1819, chap. 27; act of May 29, 1830, chap. 153, sec. 10; act of 1789, ch. 18.

(b) The 34th section of the judiciary act of 1789, authorizes the courts of the United States to issue writs of execution as well as other writs. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

Whenever, by the state laws in force in 1789, a *capias* might issue from a state court, the acts of 1759 and 1792, extending in terms to that species of writ, must be understood to have adopted its use permanently in the federal courts. *Bank of the United States v. January*, 10 Wheat. 66—in note.

The process act of 1792, chap. 36, is the law which regulates executions issuing from the courts of the United States, and it adopts the practice of the supreme courts of the States existing in 1789, as the rule for governing proceedings on such executions, subject to such alterations as the Supreme Court of the United States may make; but not subject to the alterations which have since taken place in the State laws and practice. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

At an early period after the organization of the federal courts, the rules of practice in the State courts, which were similar to the English practice, were adopted by the judges of the Circuit Court. A subsequent change in the practice of the State courts will not authorize a departure from the rules first adopted in the Circuit Court. *Peters' C. C. R. 1.*

Whenever by the laws of the United States a defendant may be arrested, the process of arrest employed in the State may be adopted. *Burr's trial*, 431.

The process act of 1828 was passed shortly after the decision of the Supreme Court of the United States, in the case of *Wayman v. Southard*, and the *Bank of the United States v. Halstead*, and was intended as a legislative sanction of the opinions of the court in those cases. The power given to the courts of the United States to make rules and regulations on final process, so as to conform the same to the laws of the States on the same subject, extends to future legislation; and as well to the modes of proceeding on executions as to the forms of writs. *Ross and King v. Duval et al.*, 13 Peters, 45.

The first judiciary act of 1789, chap. 20, does not contemplate compulsive process against any person, in any district, unless he be an inhabitant of, or found within the same district at the time of serving the writ. *Picquet v. Swann*, 5 Mason's C. C. R. 35.

Congress have by the constitution, exclusive authority to regulate proceedings in the courts of the United States, and the States have no authority to control those proceedings, except so far as the State process acts are adopted by Congress, or by the courts of the United States under the authority of Congress. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

The laws of the United States authorize the courts of the United States so to alter the form of process of execution used in the Supreme Court of the United States in 1789, as to subject to executions

to be the same as used in the Supreme Courts of the States.

Fees to be the same as in the Supreme Courts of the States.

Limitation.

causes of equity, and of admiralty and maritime jurisdiction, (a) shall be according to the course of the civil law; and the rates of fees the same as are or were last allowed by the states respectively in the court exercising supreme jurisdiction in such causes. (b) *Provided*, That on judgments in any of the cases aforesaid where different kinds of executions are issuable in succession, a *capias ad satisfaciendum* being one, the plaintiff shall have his election to take out a *capias ad satisfaciendum* in the first instance and be at liberty to pursue the same until a tender of the debt and costs in gold or silver shall be made.

SEC. 3. *And be it further enacted*, That this act shall continue in force until the end of the next session of Congress, and no longer.

APPROVED, September 29, 1789.

STATUTE I.

Sept. 29, 1789.

Act of Sept. 1, 1789, ch. 11.
Repealed by Act of February 18, 1793, ch. 8.
Goods unladen by permit and transported to a landing in the same district, to be accompanied with a certificate from the inspector or other proper officer.

CHAP. XXII.—*An Act to explain and amend an Act, intitled "An Act for registering and clearing Vessels, regulating the Coasting Trade, and for other purposes."*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when any goods, wares or merchandise of foreign growth or manufacture, shall be unladen from any ship or vessel in virtue of a permit obtained for that purpose, and shall be put into a craft or vessel, with intent to be transported to a landing within the same district, it shall be the duty of the inspector, or other officer attending the unloading of such goods, wares and merchandise, to deliver to the master or commander of every such craft or vessel, a certificate of such goods, wares and merchandise having been duly entered, and a permit granted therefor; and such certificate shall contain a description of all the packages with their marks and numbers, and shall authorize the transportation and landing of the same, at any landing within the same district, without any further fee or permit, any thing in the said recited act to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That so much of the twenty-second section of the said recited act, as exempts vessels of less than twenty,

issuing out of the courts of the United States, lands and other property not thus subject by the State laws in force at that time. *Bank of the United States v. Halsted*, 10 Wheat. 51; 6 Cond. Rep. 22.

See *Fullerton v. The Bank of the United States*, 1 Peters, 804. *Yeaton v. Lenox*, 8 Peters, 123. *Toland v. Sprague*, 12 Peters, 300.

The process act of 1828, expressly adopts the mesne process and modes of proceeding in suits at common law, then existing in the highest State court, under the State laws, which of course included all the regulations of the State laws as to bail, and exemption of the party from arrest and imprisonment. In regard also to writs of execution, and other final process, and "the proceedings thereupon," it adopts an equally comprehensive language, and declares they shall be the same as were then used in the courts of the State. *Beers v. Haughton*, 9 Peters, 329. *The Lessee of Walden v. Craig's heirs*, 14 Peters, 147. *The United States v. Knight*, 14 Peters, 301. *Amis v. Smith*, 16 Peters, 303.

So far as the acts of Congress have adopted the forms of process and modes of proceeding and pleading in the State courts, or have authorized the courts to adopt them, and have actually adopted them, they are obligatory, and no further. But no court of the United States is authorized to adopt by rule any provision of State laws which are repugnant to, or incompatible with the positive enactment of Congress upon the jurisdiction, or practice, or proceedings of such courts. *Keary et al. v. The Farmers and Mechanics Bank of Memphis*, 16 Peters, 89. *Duncan v. Darst*, 17 Peters, 209.

(a) The act regulating processes in the courts of the United States, provides that the forms and modes of proceeding in the courts of equity, and in those of admiralty and maritime jurisdiction, shall be according to the principles, rules, and usages which belong to courts of equity, and to courts of admiralty, respectively, as contradistinguished from the courts of common law, subject, however, to alterations by the courts. This act has been generally understood to adopt the principles, rules, and usages of the court of chancery in England. *Manro v. Almedia*, 10 Wheat. 473; 6 Cond. Rep. 190.

(b) The compensation to clerks of courts are regulated by the acts of March 3, 1791, chap. 22, sec. 1; act of May 8, 1792, chap. 36, sec. 3; act of February 23, 1799, chap. 19, sec. 3; act of April 18, 1814, chap. 79; act of March 8, 1824, chap. 26; act of March 3, 1841, chap. 35. Compensation of Marshals, act of March 3, 1791, chap. 22, sec. 1; act of May 8, 1792, chap. 36, sec. 3; act of February 23, 1799, chap. 19, sec. 3; act of April 18, 1814, chap. 79; act of March 8, 1824, chap. 26; act of March 3, 1841, chap. 35.



and not less than five tons burthen, employed between any of the districts of the United States, in any bay or river, and having a license from the collector of the district to which such vessel belongs, from entering and clearing for the term of one year, be extended to vessels not exceeding fifty tons: *provided*, such vessels shall not have on board goods, wares or merchandise, other than such as are actually the growth or produce of the United States.

Sec. 3. *And be it further enacted*, That so much of an act, intituled, "An act to regulate the collection of the duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States," as hath rated the ruble of Russia at one hundred cents, be, and the same is hereby repealed and made null and void.

APPROVED, September 29, 1789.

Exemption of vessels under 20 tons, from entering and clearing extended to vessels of 50 tons having on board goods, &c., the growth or produce of the U. S.

Act of July 31, 1789, ch. 5. 1790, ch. 35, § 75.

Ruble of Russia, rate of. Repealed.

STATUTE I.

CHAP. XXIII.—*An Act making Appropriations for the Service of the present year.*

Sept. 29, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be appropriated for the service of the present year, to be paid out of the monies which arise, either from the requisitions heretofore made upon the several states, or from the duties on impost and tonnage, the following sums, viz. A sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list, under the late and present government; a sum not exceeding one hundred and thirty-seven thousand dollars for defraying the expenses of the department of war: a sum not exceeding one hundred and ninety thousand dollars for discharging the warrants issued by the late board of treasury, and remaining unsatisfied; and a sum not exceeding ninety-six thousand dollars for paying the pensions to invalids.

APPROVED, September 29, 1789.

[Expired.] Specific appropriations of money for expenses of civil list and war department;

also to discharge warrants of late board of treasury, and for pensions to invalids.

STATUTE I.

CHAP. XXIV.—*An Act providing for the payment of the Invalid Pensioners of the United States.*

Sept. 29, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the military pensions which have been granted and paid by the states respectively, in pursuance of the acts of the United States in Congress assembled, to the invalids who were wounded and disabled during the late war, shall be continued and paid by the United States, from the fourth day of March last, for the space of one year, under such regulations as the President of the United States may direct.

APPROVED, September 29, 1789.

Act of July 16, 1790, ch. 27.

[Expired.] Military pensions heretofore paid by the States to be paid from 4th March last for one year, and under what regulations.

STATUTE I.

CHAP. XXV.—*An Act to recognize and adapt to the Constitution of the United States the establishment of the Troops raised under the Resolves of the United States in Congress assembled, and for other purposes therein mentioned.*

Sept. 29, 1789.

[Repealed.] Act of April 30, 1790, ch. 10, sec. 14.

Establishment of 2d Oct. 1787, recognized for troops in the service of U. S.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the establishment contained in the resolve of the late Congress of the third day of October, one thousand seven hundred and eighty-seven, except

Pay and allowance of troops.

as to the mode of appointing the officers, and also as is herein after provided, be, and the same is hereby recognized to be the establishment for the troops in the service of the United States.

SEC. 2. *And be it further enacted*, That the pay and allowances of the said troops be the same as have been established by the United States in Congress assembled, by their resolution of the twelfth of April, one thousand seven hundred and eighty-five.

To take oath to support the Constitution, and bear allegiance to the United States.

SEC. 3. *And be it further enacted*, That all commissioned and non-commissioned officers and privates, who are or shall be in the service of the United States, shall take the following oaths or affirmations, to wit: "I, A. B. do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States." "I, A. B. do solemnly swear or affirm (as the case may be) to bear true allegiance to the United States of America, and to serve them honestly and faithfully against all their enemies or opposers whatsoever, and to observe and obey the orders of the President of the United States of America, and the orders of the officers appointed over me."

Troops to be governed by rules and articles of war.

SEC. 4. *And be it further enacted*, That the said troops shall be governed by the rules and articles of war which have been established by the United States in Congress assembled, or by such rules and articles of war, as may hereafter by law be established.

For protecting frontiers, President may call forth the militia.

SEC. 5. *And be it further enacted*, That for the purpose of protecting the inhabitants of the frontiers of the United States from the hostile incursions of the Indians, the President is hereby authorized to call into service from time to time, such part of the militia of the states respectively, as he may judge necessary for the purpose aforesaid; and that their pay and subsistence while in service, be the same as the pay and subsistence of the troops above mentioned.

Pay and subsistence.

Continuance of this act.

SEC. 6. *And be it further enacted*, That this act shall continue and be in force until the end of the next session of Congress, and no longer.

APPROVED, September 29, 1789.

STATUTE I.

Sept. 29, 1789.

CHAP. XXVII.—*An Act to alter the Time for the next Meeting of Congress.*

[Expired.]

SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That after the adjournment of the present session, the next meeting of Congress shall be on the first Monday in January next.

APPROVED, September 20, 1789.

August 26, 1789.

RESOLUTIONS.

Survey directed by act of June 8, 1788, to be made and returned by Secretary of the Treasury without delay.

I. RESOLVED, That the Survey directed by Congress in their act of June the sixth, one thousand seven hundred and eighty-eight, be made and returned to the Secretary of the Treasury without delay; and that the President of the United States be requested to appoint a fit person to complete the same, who shall be allowed five dollars per day whilst actually employed in the said service, with the expenses necessarily attending the execution thereof.

APPROVED, August 26, 1789.

Sept. 23, 1789.

Recommendation to the Legislatures of the several States to pass laws making it the duty of keepers of prisons to

2. RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, That it be recommended to the legislatures of the several States to pass laws, making it expressly the duty of the keepers of their jails, to receive and safe keep therein all prisoners committed under the authority of the United States, until they shall be discharged by due course of the laws thereof, under the



like penalties as in the case of prisoners committed under the authority of such States respectively; the United States to pay for the use and keeping of such gaols, at the rate of fifty cents per month for each prisoner that shall, under their authority, be committed thereto, during the time such prisoner shall be therein confined; and also to support such of said prisoners as shall be committed for offences.

APPROVED, September 23, 1789.

receive and keep prisoners committed under authority of the United States.

Sept. 23, 1789.

Secretary of State to procure the statutes of the States.

3. RESOLVED, That it shall be the duty of the Secretary of State, to procure from time to time such of the statutes of the several states as may not be in his office.

APPROVED, September 23, 1789.

The Conventions of a number of the States having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the government will best insure the beneficent ends of its institution—

RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, That the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States, all or any of which articles, when ratified by three fourths of the said legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.:

Amendments to the Constitution of the United States.

ARTICLES in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.

ART. I. After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

ART. II. No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

ART. III. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Adopted.

ART. IV. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Adopted.

ART. V. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Adopted.

ART. VI. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, sup-

Adopted.

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ported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Adopted.

ART. VII. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

Adopted.

ART. VIII. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

Adopted.

ART. IX. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Adopted.

ART. X. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Adopted.

ART. XI. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Adopted.

ART. XII. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Sept. 29, 1789.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That John White, late a commissioner to settle the accounts between the United States and the states of Pennsylvania, Delaware, and Maryland, and his clerks, John Wright, and Joshua Dawson, be considered as in office until the fourth day of February, one thousand seven hundred and eighty-nine.
APPROVED, September 29, 1789.



CHAP. XX.—An Act to establish the Judicial Courts of the United States.(a)

STATUTE L.
Sept. 24, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the supreme court of the United States shall consist of a chief justice and five associate justices,(b) any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear date on the same day, according to their respective ages.

Supreme court to consist of a chief justice, and five associates.
Two sessions annually.
Precedence.

SEC. 2. *And be it further enacted,* That the United States shall be, and they hereby are divided into thirteen districts, to be limited and called as follows, to wit: one to consist of that part of the State of Massachusetts which lies easterly of the State of New Hampshire, and to be called Maine District; one to consist of the State of New Hampshire, and to be called New Hampshire District;(c) one to consist of the remaining part of the State of Massachusetts, and to be called Massachusetts district; one to consist of the State of Connecticut, and to be called Connecticut District; one to consist of the State of New York, and to be called New York District; one to consist of the State of New Jersey, and to be called New Jersey District; one to consist of the State of Pennsylvania, and to be called Pennsylvania District; one to consist of the State of Delaware, and to be called Delaware District; one to consist of the State of Maryland, and to be called Maryland District; one to consist of the State of Virginia, except that part called the District of Kentucky, and to be called Virginia District; one to consist of the remaining part of the State of Virginia, and to be called Kentucky District; one to consist of the State of South Carolina, and to be called South Carolina District; and one to consist of the State of Georgia, and to be called Georgia District.

Thirteen districts.

Maine.
N. Hampshire.
Massachusetts.
Connecticut.
New York.
New Jersey.
Pennsylvania.
Delaware.
Maryland.

Virginia.
Kentucky.

South Carolina.
Georgia.

A district court in each district.

SEC. 3. *And be it further enacted,* That there be a court called a District Court, in each of the afore mentioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four

(a) The 3d article of the Constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only where the subject is submitted to it by a party who asserts his right in a form presented by law. It then becomes a case. *Osborn et al. v. The Bank of the United States*, 9 Wheat. 739; 5 Cond. Rep. 741.

(b) By the act of April 29, 1802, chap. 31, the Supreme Court was declared to consist of a Chief Justice and six associate Justices, and by the act of March 3, 1837, chap. 34, it was made to consist of a Chief Justice and eight associate Justices.

By the act of April 29, 1802, chap. 31, the provision of the act of September 24, 1789, requiring two annual sessions of the Supreme Court, was repealed, and the 2d section of that act required that the associate Justice of the fourth circuit should attend at Washington on the first Monday of August annually, to make all necessary rules and orders, touching suits and actions depending in the court. This section was repealed by the 7th section of the act of February 28, 1839, chap. 36.

By an act passed May 4, 1826, chap. 37, the sessions of the Supreme Court were directed to commence on the second Monday in January annually, instead of the first Monday in February; and by an act passed June 17, 1844, the sessions of the Supreme Court were directed to commence on the first Monday in December annually.

(c) The jurisdiction and powers of the District Courts have been declared and established by the following acts of Congress: Act of September 24, 1789; act of June 5, 1794, sec. 6; act of May 10, 1800; act of December 31, 1814; act of April 10, 1816; act of April 20, 1818; act of May 15, 1820; act of March 3, 1793.

The decisions of the Courts of the United States on the jurisdiction of the District Courts have been: *The Thomas Jefferson*, 10 Wheat. 429; 6 Cond. Rep. 173. *McDonough v. Danery*, 3 Dall. 188; 1 Cond. Rep. 94. *United States v. La Vengeance*, 3 Dall. 297; 1 Cond. Rep. 132. *Glass et al. v. The Betsey*, 3 Dall. 6; 1 Cond. Rep. 10. *The Alerte v. Blas Moran*, 9 Cranch, 359; 3 Cond. Rep. 425. *The Merino et al.*, 9 Wheat. 391; 5 Cond. Rep. 623. *The Josefa Segunda*, 10 Wheat. 312; 6 Cond. Rep. 111. *The Ballina*, 1 Gallis. C. C. R. 75. *The Robert Fulton*, Paine's C. C. R. 620. *Jansen v. The Vrouw Christina Magdalena*, Bee's D. C. R. 11. *Jennings v. Carson*, 4 Cranch, 2; 2 Cond. Rep. 2. *The Sarah*, 3 Wheat. 391; 5 Cond. Rep. 472. *Penhallow et al. v. Doane's Adm'rs*, 8 Dall. 54; 1 Cond. Rep. 2. *The United States v. Richard Peters*, 3 Dall. 121; 1 Cond. Rep. 60. *McLellan v. the United States*, 9

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Four sessions annually in a district; and when held.

Special district courts.
Stated district courts; when holden.

Special courts, where held.

Where records kept.

Three circuits, and how divided.
[Obsolete.]

sessions, the first of which to commence as follows, to wit: in the districts of New York and of New Jersey on the first, in the district of Pennsylvania on the second, in the district of Connecticut on the third, and in the district of Delaware on the fourth, Tuesdays of November next; in the districts of Massachusetts, of Maine, and of Maryland, on the first, in the district of Georgia on the second, and in the districts of New Hampshire, of Virginia, and of Kentucky, on the third Tuesdays of December next; and the other three sessions progressively in the respective districts on the like Tuesdays of every third calendar month afterwards, and in the district of South Carolina, on the third Monday in March and September, the first Monday in July, and the second Monday in December of each and every year, commencing in December next; and that the District Judge shall have power to hold special courts at his discretion. That the stated District Court shall be held at the places following, to wit: in the district of Maine, at Portland and Pownalsborough alternately, beginning at the first; in the district of New Hampshire, at Exeter and Portsmouth alternately, beginning at the first; in the district of Massachusetts, at Boston and Salem alternately, beginning at the first; in the district of Connecticut, alternately at Hartford and New Haven, beginning at the first; in the district of New York, at New York; in the district of New Jersey, alternately at New Brunswick and Burlington, beginning at the first; in the district of Pennsylvania, at Philadelphia and York Town alternately, beginning at the first; in the district of Delaware, alternately at Newcastle and Dover, beginning at the first; in the district of Maryland, alternately at Baltimore and Easton, beginning at the first; in the district of Virginia, alternately at Richmond and Williamsburgh, beginning at the first; in the district of Kentucky, at Harrodsburgh; in the district of South Carolina, at Charleston; and in the district of Georgia, alternately at Savannah and Augusta, beginning at the first; and that the special courts shall be held at the same place in each district as the stated courts, or in districts that have two, at either of them, in the discretion of the judge, or at such other place in the district, as the nature of the business and his discretion shall direct. And that in the districts that have but one place for holding the District Court, the records thereof shall be kept at that place; and in districts that have two, at that place in each district which the judge shall appoint.

SEC. 4. And be it further enacted, That the before mentioned districts, except those of Maine and Kentucky, shall be divided into three circuits, and be called the eastern, the middle, and the southern circuit. That the eastern circuit shall consist of the districts of New Hampshire, Massachusetts, Connecticut and New York; that the middle circuit shall consist of the districts of New Jersey, Pennsylvania, Delaware, Maryland and Virginia; and that the southern circuit shall consist of the districts of South Carolina and Georgia, and that there shall be held annually in each district of said circuits, two courts, which shall be called Circuit Courts, and shall consist of any two justices of

1 Gallia, C. C. R. 237. Hudson et al. v. Guestier, 6 Cranch, 281; 2 Cond. Rep. 374. Brown v. The United States, 8 Cranch, 110; 3 Cond. Rep. 56. Do Lovio v. Bolt et al., 2 Gallia, Rep. 398. Burke v. Trevitt, 1 Mason, 86. The Amiable Nancy, 3 Wheat. 546; 4 Cond. Rep. 322. The Abby, 1 Mason, 360. The Little Ann, Paine's C. C. R. 40. Slocum v. Mayberry et al., 3 Wheat. 1; 4 Cond. Rep. 1. Southwick v. The Postmaster General, 2 Peters, 442. Davis v. A New Brig, Gilpin's D. C. R. 478. Smith v. The Pekin, Gilpin's D. C. R. 203. Peters' Digest, "Courts," "District Courts of the United States."

The 3d section of the act of Congress of 1789, to establish the Judicial Courts of the United States, which provides that no summary writ, return of process, judgment, or other proceedings in the courts of the United States shall be abated, arrested or quashed for any defect or want of form, &c., although it does not include verdicts, ex nomine, but judgments are included, and the language of the provision, "writ, declaration, judgment or other proceeding, in court causes," and further "such writ, declaration, pleading, process, judgment or other proceeding whatsoever," is sufficiently comprehensive to embrace every conceivable step to be taken in a court, from the emanation of the writ, down to the judgment. Roach v. Hulings, 10 Peters, 319.



the Supreme Court, and the district judge of such districts, any two of whom shall constitute a quorum: *Provided*, That no district judge shall give a vote in any case of appeal or error from his own decision; but may assign the reasons of such his decision.

Sec. 5. *And be it further enacted*, That the first session of the said circuit court in the several districts shall commence at the times following, to wit: in New Jersey on the second, in New York on the fourth, in Pennsylvania on the eleventh, in Connecticut on the twenty-second, and in Delaware on the twenty-seventh, days of April next; in Massachusetts on the third, in Maryland on the seventh, in South Carolina on the twelfth, in New Hampshire on the twentieth, in Virginia on the twenty-second; and in Georgia on the twenty-eighth, days of May next, and the subsequent sessions in the respective districts on the like days of every sixth calendar month afterwards, except in South Carolina, where the session of the said court shall commence on the first, and in Georgia where it shall commence on the seventeenth day of October, and except when any of those days shall happen on a Sunday, and then the session shall commence on the next day following. And the sessions of the said circuit court shall be held in the district of New Hampshire, at Portsmouth and Exeter alternately, beginning at the first; in the district of Massachusetts, at Boston; in the district of Connecticut, alternately at Hartford and New Haven, beginning at the last; in the district of New York, alternately at New York and Albany, beginning at the first; in the district of New Jersey, at Trenton; in the district of Pennsylvania, alternately at Philadelphia and Yorktown, beginning at the first; in the district of Delaware, alternately at New Castle and Dover, beginning at the first; in the district of Maryland, alternately at Annapolis and Easton, beginning at the first; in the district of Virginia, alternately at Charlottesville and Williamsburgh, beginning at the first; in the district of South Carolina, alternately at Columbia and Charleston, beginning at the first; and in the district of Georgia, alternately at Savannah and Augusta, beginning at the first. And the circuit courts shall have power to hold special sessions for the trial of criminal causes at any other time at their discretion, or at the discretion of the Supreme Court. (a)

First session
of the circuit
courts; when
holden.
[Obsolete.]

Where holden.

Circuit courts.
Special ses-
sions.

(a) The sessions of the Circuit Courts have been regulated by the following acts: In ALABAMA—act of March 3, 1837. In ARKANSAS—act of March 3, 1837. In CONNECTICUT—act of September 24, 1789; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of April 29, 1802; act of May 13, 1826. In DELAWARE—act of September 24, 1789; act of March 3, 1797; act of April 29, 1802; act of March 24, 1804; act of March 3, 1837. In GEORGIA—act of September 24, 1789; act of August 11, 1790; act of April 13, 1792; act of March 3, 1797; act of April 29, 1802; act of May 13, 1826; act of Jan. 21, 1829. In KENTUCKY—act of March 3, 1801; act of March 3, 1802; act of March 2, 1803; act of Feb. 27, 1807; act of March 22, 1808; April 22, 1824. In LOUISIANA—act of March 3, 1837. In MAINE—act of March 3, 1801; act of March 8, 1803; act of March 30, 1820. In MARYLAND—act of Sept. 24, 1789; act of March 3, 1797; act of April 29, 1802; act of Feb. 11, 1830; act of March 3, 1837. In MASSACHUSETTS—act of Sept. 24, 1789; act of March 3, 1791; act of June 8, 1794; act of March 2, 1793; act of March 3, 1797; act of March 3, 1801; act of March 8, 1802; act of April 29, 1802; act of March 28, 1812. In MISSOURI—act of March 3, 1837. In MISSISSIPPI—act of March 3, 1839. In NEW HAMPSHIRE—act of Sept. 24, 1789; act of March 3, 1797; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of March 3, 1801; act of April 29, 1802; act of March 6, 1812. In NEW JERSEY—act of September 24, 1789; act of March 3, 1797; act of April 2, 1802. In NEW YORK—act of September 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of April 29, 1802; act of March 3, 1825; act of February 10, 1832; act of May 13, 1836; act of March 3, 1837. In NORTH CAROLINA—act of September 24, 1789; act of April 13, 1792; act of March 2, 1793; act of March 31, 1796; act of March 3, 1797; act of July 5, 1797; act of April 29, 1802; act of March 8, 1806; act of February 4, 1807. In OHIO—act of February 24, 1807; act of March 22, 1808; act of April 22, 1824; act of May 20, 1826. In PENNSYLVANIA—act of September 24, 1789; act of May 12, 1796; act of March 3, 1797; act of December 24, 1799; act of April 29, 1802; act of March 3, 1837. In RHODE ISLAND—act of June 23, 1790; act of March 3, 1791; act of March 2, 1793; act of May 22, 1796; act of March 3, 1797; act of March 3, 1801; act of March 8, 1802; act of April 29, 1802; act of March 28, 1812. In SOUTH CAROLINA—act of September 24, 1789; act of August 11, 1790; act of March 3, 1797; act of April 29, 1802; act of April 14, 1816; act of May 25, 1824; act of March 3, 1825; act of May 4, 1826; act of February 5, 1829. In TENNESSEE—act of February 24, 1807; act of March 22, 1803; act of March 10, 1812; act of January 13, 1831. In VERMONT—act of March 2, 1791; act of March 2, 1793; act of May 27, 1796; act of March 3, 1797; act of April 29, 1802; act of March 22, 1816. In VIRGINIA—act of September 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 3, 1797; act of April 29, 1802; act of March 2, 1837. See the General Index.

Supreme court
adjourned by
one or more
justices; circuit
courts adjourn-
ed.

District courts
adjourned.

The courts
have power to
appoint clerks.

Their oath or
affirmation.

Oath of jus-
tices of supreme
court and judges
of the district
court.

District courts
exclusive juris-
diction.

Sec. 6. *And be it further enacted*, That the Supreme Court may, by any one or more of its justices being present, be adjourned from day to day until a quorum be convened; and that a circuit court may also be adjourned from day to day by any one of its judges, or if none are present, by the marshal of the district until a quorum be convened; (a) and that a district court, in case of the inability of the judge to attend at the commencement of a session, may by virtue of a written order from the said judge, directed to the marshal of the district, be adjourned by the said marshal to such day, antecedent to the next stated session of the said court, as in the said order shall be appointed; and in case of the death of the said judge, and his vacancy not being supplied, all process, pleadings and proceedings of what nature soever, pending before the said court, shall be continued of course until the next stated session after the appointment and acceptance of the office by his successor.

Sec. 7. *And be it [further] enacted*, That the Supreme Court, and the district courts shall have power to appoint clerks for their respective courts, (b) and that the clerk for each district court shall be clerk also of the circuit court in such district, and each of the said clerks shall, before he enters upon the execution of his office, take the following oath or affirmation, to wit: "I, A. B., being appointed clerk of do solemnly swear, or affirm, that I will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God." Which words, so help me God, shall be omitted in all cases where an affirmation is admitted instead of an oath. And the said clerks shall also severally give bond, with sufficient sureties, (to be approved of by the Supreme and district courts respectively) to the United States, in the sum of two thousand dollars, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and determinations of the court of which he is clerk.

Sec. 8. *And be it further enacted*, That the justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: "I, A. B., do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God."

Sec. 9. *And be it further enacted*, That the district courts (c) shall have, exclusively of the courts of the several States, cognizance of all crimes and offences that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the

By the act of March 10, 1838, the Justice of the Supreme Court is required to attend but one circuit in the districts of Indiana, Illinois, and Michigan.

By an act passed in 1844, the Justices of the Supreme Court are empowered to hold but one session of the Circuit Court in each district in their several circuits. The Judges of the District Courts hold the other sessions of the Circuit Court in their several districts.

(a) The provisions of law on the subject of the adjournments of the Supreme Court in addition to the 5th section of this act, are, that in case of epidemical disease, the court may be adjourned to some other place than the seat of government. Act of February 25, 1799.

(b) By the 2d section of the act entitled "an act in amendment of the acts respecting the judicial system of the United States," passed February 28, 1839, chap. 36, it is provided "that all the circuit courts of the United States shall have the appointment of their own clerks, and in case of disagreement between the judges, the appointment shall be made by the presiding judge of the court." See *ex parte Duncan* N. Hennen, 13 Peters, 230.

(c) The further legislation on the subject of the jurisdiction and powers of the District Courts are: the act of June 8, 1794, ch. 60, sec. 8; act of May 10, 1800, chap. 51, sec. 6; act of February 24, 1807, chap. 13; act of February 24, 1807, chap. 18; act of March 3, 1815; act of April 16, 1816, chap. 58, sec. 6; act of April 20, 1818, chap. 38; act of May 15, 1820, chap. 106, sec. 4; act of March 3, 1823, chap. 72.



high seas; where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted; and shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas; (a) saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it; and shall also have exclusive original cognizance of all seizures on land, or other waters than as aforesaid, made, and of all suits for penalties and forfeitures incurred, under the laws of the United States. (b) And shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States. (c) And shall also have cognizance, concurrent as last mentioned, of all suits at common law where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And shall also have jurisdiction exclusively of the courts of the several States, of all suits against consuls or vice-consuls, except for offences above the description aforesaid. (d) And the trial of issues in fact, in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury.

Sec. 10. And be it further enacted, That the district court in Kentucky district shall, besides the jurisdiction aforesaid, have jurisdiction of all other causes, except of appeals and writs of error, hereinafter made cognizable in a circuit court, and shall proceed therein in the same

(Acts of June 5, 1794, sect. 6; act of Feb. 13, 1807; act of March 3, 1815, sect. 4.)

Original cognizance in maritime causes and of seizure under the laws of the United States.

Concurrent jurisdiction.

Trial of fact by jury.

Kentucky district court. [Obsolete.] 1807, ch. 16.

(a) Jurisdiction of the District Courts in cases of admiralty seizures, under laws of impost, navigation and trade. *McDonough v. Danery*, 3 Dall. 188; 1 Cond. Rep. 94. *The United States v. La Vengeance*, 3 Dall. 297; 1 Cond. Rep. 132. *Glass et al. v. The Betsy*, 3 Dall. 6; 1 Cond. Rep. 10. *The Aletta*, 9 Cranch, 359; 3 Cond. Rep. 425. *The Merino et al.*, 9 Wheat. 391; 5 Cond. Rep. 623. *The Josefa Segunda*, 10 Wheat. 312; 6 Cond. Rep. 111. *Jennings v. Carson*, 4 Cranch, 2; 2 Cond. Rep. 2. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *Penhallow et al. v. Doane's Admrs.*, 3 Dall. 54; 1 Cond. Rep. 21. *United States v. Richard Peters*, 3 Dall. 121; 1 Cond. Rep. 60. *Hudson et al. v. Guesier*, 6 Cranch, 231; 2 Cond. Rep. 374. *Brown v. The United States*, 8 Cranch, 110; 3 Cond. Rep. 56. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *The Amiable Nancy*, 3 Wheat. 546; 4 Cond. Rep. 322. *Slocum v. Mayberry*, 2 Wheat. 1; 4 Cond. Rep. 1. *Gelston et al. v. Hoyt*, 3 Wheat. 246; 4 Cond. Rep. 244. *The Bolina*, 1 Gallis. C. C. R. 72. *The Robert Fulton*, 1 Faib's C. C. R. 620; Bee's D. C. R. 11. *De Lovio v. Boit et al.*, 2 Gallis. C. C. R. 398. *The Abby*, 1 Mason's Rep. 360. *The Little Ann*, Paine's C. C. R. 40. *Davis v. A New Brig. Gilpin's D. C. R.* 473. *The Catharine*, 1 Adm. Decis. 104.

(b) An information against a vessel under the act of Congress of May 23, 1794, on account of an alleged exportation of arms, is a case of admiralty and maritime jurisdiction; and an appeal from the District to the Circuit Court, in such a case is sustainable. It is also a civil cause, and triable without the intervention of a jury, under the 9th section of the judicial act. *The United States v. La Vengeance*, 3 Dall. 297; 1 Cond. Rep. 132. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *The Abby*, 1 Mason, 360. *The Little Ann*, Paine's C. C. R. 40.

When the District and State courts have concurrent jurisdiction, the right to maintain the jurisdiction attaches to that tribunal which first exercises it, and obtains possession of the thing. *The Robert Fulton*, Paine's C. C. R. 620.

(c) *Burke v. Trevitt*, 1 Mason, 36. The courts of the United States have exclusive jurisdiction of all seizures made on land or water, for a breach of the laws of the United States, and any intervention of State authority, which by taking the thing seized out of the hands of the officer of the United States, might obstruct the exercise of this jurisdiction, is unlawful. *Slocum v. Mayberry et al.*, 2 Wheat. 1; 4 Cond. Rep. 1.

(d) *Davis v. Packard*, 6 Peters, 41. As an abstract question, it is difficult to understand on what ground a State court can claim jurisdiction of civil suits against foreign consuls. By the Constitution, the judicial power of the United States extends to all cases affecting ambassadors, other public ministers and consuls; and the judiciary act of 1789 gives to the district courts of the United States, exclusively of the courts of the several States, jurisdiction of all suits against consuls and vice consuls, except for certain offences enumerated in this act. *Davis v. Packard*, 7 Peters, 276.

If a consul, being sued in a State court, omits to plead his privilege of exemption from the suit, and afterwards, on removing the judgment of the inferior court to a higher court by writ of error, claims the privilege, such an omission is not a waiver of the privilege. If this was to be viewed merely as a personal privilege, there might be grounds for such a conclusion. But it cannot be so considered; it is the privilege of the country or government which the consul represents. This is the light in which foreign ministers are considered by the law of nations; and our constitution and law seem to put consuls on the same footing in this respect. *Ibid.*

Maine district court.
[Obscure.]

Circuit courts original cognizance where the matter in dispute exceeds five hundred dollars.

manner as a circuit court, and writs of error and appeals shall lie from decisions therein to the Supreme Court in the same causes, as from a circuit court to the Supreme Court, and under the same regulations. (a) And the district court in Maine shall, besides the jurisdiction herein before granted, have jurisdiction of all causes, except of appeals and writs of error herein after made cognizable in a circuit court, and shall proceed therein in the same manner as a circuit court: And writs of error shall lie from decisions therein to the circuit court in the district of Massachusetts in the same manner as from other district courts to their respective circuit courts.

SEC. 11. And be it further enacted, That the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State. (b) And shall have

(a) By an act passed February 24, 1807, the Circuit Court jurisdiction of the District Court of Kentucky was abolished.

(b) The amount laid in the declaration is the sum in controversy. If the plaintiff receive less than the amount so claimed, the jurisdiction of the court is not affected. *Green v. Lifer*, 8 Cranch, 229. *Gordon v. Longest*, 18 Peters, 87. *Lessee of Hartshorn v. Wright, Peters' C. C. R.* 64.

By the 5th section of the act of February 21, 1794, "an act to promote the progress of the useful arts," &c., jurisdiction in actions for violations of patent rights, is given to the Circuit Courts. Also by the act of February 15, 1819, original cognizance, as well in equity as at law, is given to the Circuit Courts of all actions, and for the violation of copy rights. In such cases appeals lie to the Supreme Court of the United States. So also in cases of interest, or disability of a district judge. Act of May 8, 1792, sec. 11; act of March 2, 1809, sec. 1; act of March 3, 1821.

Jurisdiction in cases of injunctions on Treasury warrants of distress. Act of May 15, 1820, sec. 4.

Jurisdiction in cases removed from State courts. Act of February 4, 1815, sec. 8; act of March 3, 1815, sec. 6.

Jurisdiction in cases of assigned debentures. Act of March 2, 1799.

Jurisdiction of crimes committed within the Indian territories. Act of March 30, 1830, sec. 15; act of April 30, 1816, sec. 4; act of March 3, 1817, sec. 2.

Jurisdiction in bankruptcy. Act of August 19, 1841, chap. 9, [repealed.]

Jurisdiction in cases where citizens of the same State claim title to land under a grant from a State other than that in which the suit is pending in a State court. Act of September 24, 1789, sec. 12. See *Colson v. Lewis*, 2 Wheat. 377; 4 Cond. Rep. 168.

Jurisdiction where officers of customs are parties. Act of February 4, 1815, sec. 8; act of March 3, 1815, sec. 6; act of March 3, 1817, sec. 2.

A circuit court though an inferior court in the language of the constitution, is not so in the language of the common law; nor are its proceedings subject to the scrutiny of those narrow rules, which the caution or jealousy of the courts at Westminster long applied to courts of that denomination; but are entitled to as liberal intendments and presumptions in favour of their regularity, as those of any supreme court. *Turner v. The Bank of North America*, 4 Dall. 8; 1 Cond. Rep. 203.

The Circuit Courts of the United States have cognizance of all offences against the United States. What those offences are depends upon the common law applied to the sovereignty and authorities conferred to the United States. *The United States v. Coolidge*, 1 Galliz. C. C. R. 488, 495.

Where the jurisdiction of the federal courts has once attached, no subsequent change in the relation or condition of the parties in the progress of the cause, will oust that jurisdiction. *The United States v. Meyers*, 2 Brocken. C. C. R. 516.

All the cases arising under the laws of the United States are not, per se, among the cases comprised within the jurisdiction of the Circuit Court, under the provisions of the 11th section of the judiciary act of 1789. *The Postmaster General v. Stockton and Stokes*, 18 Peters, 524.

Jurisdiction of the Circuit Courts of the United States in suits between aliens and citizens of another State, than that in which the suit is brought:

The courts of the United States will entertain jurisdiction of a cause where all the parties are aliens, if none of them object to it. *Mason et al. v. The Blaireau*, 2 Cranch, 240; 1 Cond. Rep. 297.

The Supreme Court understands the expressions in the act of Congress, giving jurisdiction to the courts of the United States "where an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State," to mean that each distinct interest should be represented by persons, all of whom have a right to sue, or may be sued in the federal courts: that is, when the interest is joint, each of the persons concerned in that interest must be competent to sue or be liable to be sued in those courts. *Strawbridge v. Curtis*, 3 Cranch, 267; 1 Cond. Rep. 523.

Neither the Constitution nor the act of Congress regards the subject of the suit, but the parties to it. *Mossman's Exors v. Higginson*, 4 Dall. 12; 1 Cond. Rep. 210.

When the jurisdiction of the Circuit Court depends on the character of the parties, and each party consists of a number of individuals, each one must be competent to sue in the courts of the United States, or jurisdiction cannot be entertained. *Ward v. Arredondo et al.*, *Paine's C. C. R.* 410. *Strawbridge v. Curtis*, 3 Cranch, 267; 1 Cond. Rep. 523.

The courts of the United States have not jurisdiction, unless it appears by the record that it belongs

exclusive cognizance of all crimes and offences cognizable under the authority of the United States, (a) except where this act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable therein. But no person shall be arrested in one district for trial in another, in any civil action before a circuit or district court. (b) And no civil suit shall be brought before either of said courts against an inhabitant of the United States, by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ, nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favour of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange. (c) And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions herein after provided. (d)

Sec. 12. And be it further enacted, That if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court; and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial into the next circuit court, to be held in the district where the suit is pending, or if in the district of Maine to the district court next to be holden therein, or if in Kentucky district to the district court next to be holden therein, and offer good and sufficient surety for his entering in such court, on the first day of its session, copies of said process against him, and also for his there appearing and entering special bail in the cause, if special bail was originally requisite therein, it shall then be the duty of the state court to accept the surety, and proceed no further in the cause, and any bail that may have been originally taken shall be discharged, and the said copies being entered as aforesaid, in such court of the United States, the cause shall there proceed in the same manner as if it had been brought there by original process. (c) And any attach-

Exclusive cognizance of crimes and offences cognizable under the laws of the United States.

No person to be arrested in one district for trial in another on any civil suit.

Limitation as to civil suits. Actions on promissory notes.

Circuit courts shall also have appellate jurisdiction.

Matter in dispute above 500 dollars.

Removal of causes from state courts.

Special bail.

to them, as that the parties are citizens of different States, *Wood v. Wagon*, 2 Cranch, 9; 1 Cond. Rep. 335.

Where the parties to a suit are such as to give the federal courts jurisdiction, it is immaterial that they are administrators or executors, and that those they represent were citizens of the same State. *Chapdelaine et al. v. Dechenaux*, 4 Cranch, 308; 2 Cond. Rep. 116. *Childress et al. v. Emory et al.*, 8 Wheat. 642; 5 Cond. Rep. 547. See also *Brown v. Strode*, 5 Cranch, 303; 2 Cond. Rep. 265. *Bingham v. Cabot*, 3 Dall. 382; 1 Cond. Rep. 170. *Gracie v. Palmer*, 8 Wheat. 699; 5 Cond. Rep. 561. *Massele v. Watts*, 6 Cranch, 148; 2 Cond. Rep. 332. *Sere et al. v. Pitot et al.*, 6 Cranch, 332; 2 Cond. Rep. 389. *Shute v. Davis, Peters*, C. C. R. 431. *Flanders v. The Aetna Ins. Com.*, 3 Mason, C. C. R. 158. *Kitchen v. Sullivan et al.*, 4 Wash. C. C. R. 84. *Briggs v. French*, 2 Sumner's C. C. R. 252.

(a) The Circuit Courts of the United States have jurisdiction of a robbery committed on the high seas under the 8th section of the act of April 30, 1790, although such robbery could not, if committed on land, be punished with death. *The United States v. Palmer et al.*, 3 Wheat. 610; 4 Cond. Rep. 352. See *The United States v. Coolidge et al.*, 1 Gallis. C. C. R. 488, 495. *The United States v. Coombs*, 12 Peters, 72.

The Circuit Courts have no original jurisdiction in suits for penalties and forfeitures arising under the laws of the United States, but the District Courts have exclusive jurisdiction. *Kedland v. The Cassius*, 2 Dall. 366.

(b) The petitioner was arrested in Pennsylvania, by the marshal of the district of Pennsylvania, under an attachment from the Circuit Court of Rhode Island, for a contempt in not appearing in that court after a monition, served upon him in the State of Pennsylvania, to answer in a prize cause as to a certain bale of goods condemned to the captors, which had come into the possession of Peter Graham, the petitioner. Held, that the circuit and district courts of the United States cannot, either in suits at law or equity, send their process into another district, except where specially authorized so to do by some act of Congress. *Ex parte Peter Graham*, 3 Wash. C. C. R. 456.

(c) *Bean v. Smith*, 2 Mason's C. C. R. 252. *Young v. Bryan*, 6 Wheat. 146; 5 Cond. Rep. 44. *Molan v. Torrance*, 9 Wheat. 537; 5 Cond. Rep. 668.

(d) *Smith v. Jackson*, Paine's C. C. R. 453.

(e) The Judge of a State Court to which an application is made for the removal of a cause into a court of the United States must exercise a legal discretion as to the right claimed to remove the cause;

Attachment of goods holden to final judgment.

Title of land where value exceeds 500 dollars.

If in Maine and Kentucky, where causes are removable. [Obsolete.]

Issues in fact by jury.

Supreme court exclusive jurisdiction.

Proceedings against public ministers.

ment of the goods or estate of the defendant by the original process, shall hold the goods or estate so attached, to answer the final judgment in the same manner as by the laws of such state they would have been holden to answer final judgment, had it been rendered by the court in which the suit commenced. And if in any action commenced in a state court, the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, shall state to the court and make affidavit if they require it, that he claims and shall rely upon a right or title to the land, under a grant from a state other than that in which the suit is pending, and produce the original grant or an exemplification of it, except where the loss of public records shall put it out of his power; and shall move that the adverse party inform the court, whether he claims a right or title to the land under a grant from the state in which the suit is pending; the said adverse [party] shall give such information, or otherwise not be allowed to plead such grant, or give it in evidence upon the trial, and if he informs that he does claim under such grant, the party claiming under the grant first mentioned may then, on motion, remove the cause for trial to the next circuit court to be holden in such district, or if in the district of Maine, to the court next to be holden therein; or if in Kentucky district, to the district court next to be holden therein; but if he is the defendant, shall do it under the same regulations as in the before-mentioned case of the removal of a cause into such court by an alien; and neither party removing the cause, shall be allowed to plead or give evidence of any other title than that by him stated as aforesaid, as the ground of his claim; and the trial of issues in fact in the circuit courts shall, in all suits, except those of equity, and of admiralty, and maritime jurisdiction, be by jury. (a.)

Sec. 13. And be it further enacted, That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. (b.) And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul,

the defendant being entitled to the right to remove the cause under the law of the United States, on the facts of the case, (the judge of the State court could not legally prevent the removal;) the application for the removal having been made in proper form. It was the duty of the State court to proceed no further in the cause. *Gordon v. Longest*, 16 Peters, 87.

One great object in the establishment of the courts of the United States, and regulating their jurisdiction, was to have a tribunal in each State presumed to be free from local influence, and to which all who were non-residents or aliens, might resort for legal redress; and this object would be defeated if a judge in the exercise of any other than a legal discretion, may deny to the party entitled to it, a removal of his cause. *Ibid.*

(a) The provisions of the laws of the United States relating to juries, and trials by jury are:—Trial by jury—act of September 24, 1789, chap. 20, sec. 10, sec. 12, sec. 15.—Exemption from attending on juries—act of May 7, 1800, chap. 46, sec. 4. Choice of jurors and qualification of juries—act of September 24, 1789, chap. 20, sec. 28; act of May 13, 1800; act of July 20, 1840; act of March 3, 1841, chap. 19. Expired as to juries in Pennsylvania. Special jury act of April 29, 1802, chap. 31, sec. 30. Jury in criminal cases—act of September 24, 1789, chap. 20, sec. 29; act of April 30, 1790, chap. 9. Manner of summoning jurors—act of September 24, 1789, sec. 29; act of April 29, 1802, chap. 31. Jurymen de talibus—act of September 24, 1789, chap. 20.

(b) As to cases in which States, or alleged States, are parties, the following cases are referred to: The Cherokee Nation v. The State of Georgia, 5 Peters, 1. New Jersey v. The State of New York, 5 Peters, 284. Ex parte Juan Madrazo, 7 Peters, 627. The State of Rhode Island v. The State of Massachusetts, 12 Peters, 857. Cohens v. The State of Virginia, 6 Wheat, 264; 5 Cond. Rep. 90. New York v. Connecticut, 4 Dall. 3. Fowler v. Lindsay et al., 3 Dall. 411.

or vice consul, shall be a party.(a) And the trial of issues in fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for;(b) and shall have power to issue writs of prohibition(c) to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of *mandamus*,(d) in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

Sup. Court
appellate juris-
diction.
Writs of Pro-
hibition.
Of Mandamus.

SEC. 14. And be it further enacted, That all the before-mentioned courts of the United States, shall have power to issue writs of *scire facias*, *habeas corpus*,(e) and all other writs not specially provided for

Courts may
issue writs *scire*
facias, *habeas*
corpus, &c.

(a) The United States v. Ortega, 11 Wheat. 467; 6 Cond. Rep. 394. Davis v. Packard, 6 Peters, 41.
(b) As to the appellate jurisdiction of the Supreme Court, see the cases collected in Peters's Digest, "Supreme Court," "Appellate Jurisdiction of the Supreme Court," and the following cases: The United States v. Goodwin, 7 Cranch, 193; 2 Cond. Rep. 434. Wiscart v. Dauchy, 3 Dall. 321; 1 Cond. Rep. 144. United States v. Moore, 3 Cranch, 169; 1 Cond. Rep. 480. Owings v. Norwood's Lessee, 5 Cranch, 244; 2 Cond. Rep. 275. Martin v. Hunter's Lessee, 1 Wheat. 304; 3 Cond. Rep. 575. Gordon v. Caldwell, 3 Cranch, 289; 1 Cond. Rep. 624. Ex parte Kearney, 7 Wheat. 38; 5 Cond. Rep. 225. Smith v. The State of Maryland, 6 Cranch, 286; 2 Cond. Rep. 377. Ingles v. Cobridge, 2 Wheat. 563; 4 Cond. Rep. 155. Nicholls et al. v. Hodges Ex'ors, 1 Peters, 562. Buel et al. v. Van Ness, 8 Wheat. 312; 5 Cond. Rep. 445. Miller v. Nicholls, 4 Wheat. 311; 4 Cond. Rep. 465. Matthews v. Zane et al., 7 Wheat. 164; 5 Cond. Rep. 265. McCluny v. Silliman, 6 Wheat. 598; 5 Cond. Rep. 197. Houston v. Moore, 3 Wheat. 439; 3 Cond. Rep. 286. Montgomery v. Hernandez et al., 12 Wheat. 129; 6 Cond. Rep. 475. Cohens v. Virginia, 6 Wheat. 264; 5 Cond. Rep. 90. Gibbons v. Ogden, 6 Wheat. 448; 5 Cond. Rep. 134. Weston et al. v. The City Council of Charleston, 2 Peters, 449. Hickie v. Starke et al., 1 Peters, 94. Salterlee v. Matthewson, 2 Peters, 330. McBride v. Hoey, 11 Peters, 167. Ross v. Barland et al., 1 Peters, 655. The City of New Orleans v. De Armas, 9 Peters, 224. Crowell v. Randall, 10 Peters, 368. Williams v. Norris, 12 Wheat. 117; 6 Cond. Rep. 162. Menard v. Aspasia, 5 Peters, 505. Worcester v. The State of Georgia, 6 Peters, 515. The United States v. Moore, 3 Cranch, 159; 1 Cond. Rep. 450.
(c) Prohibition. Where the District Court of the United States has no jurisdiction of a cause brought before it, a prohibition will be issued from the Supreme Court to prevent proceedings. The United States v. Judge Peters, 3 Dall. 121; 1 Cond. Rep. 60.
(d) Mandamus. The following cases have been decided on the power of the Supreme Court to issue a mandamus. Marbury v. Madison, 1 Cranch, 137; 1 Cond. Rep. 267. McCluny v. Silliman, 2 Wheat. 389; 4 Cond. Rep. 162. United States v. Lawrence, 3 Dall. 42; 1 Cond. Rep. 19. United States v. Peters, 3 Dall. 121; 1 Cond. Rep. 60. Ex parte Burr, 9 Wheat. 529; 5 Cond. Rep. 650. Parker v. The Judges of the Circuit Court of Maryland, 12 Wheat. 561; 6 Cond. Rep. 644. Ex parte Roberts et al., 6 Peters, 216. Ex parte Davenport, 6 Peters, 661. Ex parte Bradstreet, 12 Peters, 174; 7 Peters, 634; 8 Peters, 583. Life and Fire Ins. Comp. of New York v. Wilson's heirs, 3 Peters, 291.
On a mandamus a superior court will never direct in what manner the discretion of the inferior tribunal shall be exercised; but they will, in a proper case, require an inferior court to decide. *Ibid.* Life and Fire Ins. Comp. of New York v. Adams, 9 Peters, 571. Ex parte Story, 12 Peters, 339. Ex parte Jesse Hoyt, collector, &c., 13 Peters, 279.
A writ of mandamus is not a proper process to correct an erroneous judgment or decree rendered in an inferior court. This is a matter which is properly examinable on a writ of error, or an appeal to a proper appellate tribunal. *Ibid.*
Writs of mandamus from the Circuit Courts of the United States. A Circuit Court of the United States has power to issue a mandamus to a collector, commanding him to grant a clearance. Gilchrist et al. v. Collector of Charleston, 1 Hall's Admiralty Law Journal, 429.
The power of the Circuit Court to issue the writ of mandamus is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. McIntire v. Wood, 7 Cranch, 504; 2 Cond. Rep. 588.
The Circuit Courts of the United States have no power to issue writs of mandamus after the practice of the King's Bench; but only where they are necessary for the exercise of their jurisdiction. Smith v. Jackson, Paine's C. C. R. 453.
(e) Habeas corpus. Ex parte Burford, 3 Cranch, 448; 1 Cond. Rep. 594; Ex parte Bollman, 4 Cranch, 78; 2 Cond. Rep. 33.
The writ of habeas corpus does not lie to bring up a person confined in the prison bounds upon a capias ad satisfaciendum, issued in a civil suit. Ex parte Wilson, 8 Cranch, 52; 2 Cond. Rep. 300. Ex parte Kearney, 7 Wheat. 38; 5 Cond. Rep. 225.
The power of the Supreme Court to award writs of habeas corpus is conferred expressly on the court by the 14th section of the judicial act, and has been repeatedly exercised. No doubt exists respecting the power. No law of the United States prescribes the cases in which this great writ shall be issued, nor the power of the court over the party brought up by it. The term used in the constitution is one which is well understood, and the judicial act authorizes the court, and all other courts of the United States and the judges thereof to issue the writ "for the purpose of inquiring into the cause of commitment." Ex parte Tobias Watkins, 3 Peters, 201.
As the jurisdiction of the Supreme Court is appellate, it must be shown to the court that the court has power to award a habeas corpus, before one will be granted. Ex parte Milburn, 9 Peters, 704.

Act of 1792, ch. 22; act of 1807, ch. 13; act of 1818, ch. 83; act of Feb. 1819; act of May 20, 1826, ch. 134.

Limitation of writs of habeas corpus.

Parties shall produce books and writings.

Suits in equity limited.

by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—*Provided*, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same; or are necessary to be brought into court to testify.

SEC. 15. *And be it further enacted*, That all the said courts of the United States, shall have power in the trial of actions at law, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively, on motion, to give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively on motion as aforesaid, to give judgment against him or her by default.(a)

SEC. 16. *And be it further enacted*, That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law.(b)

The act of Congress authorizing the writ of *habeas corpus* to be issued "for the purpose of inquiring into the cause of commitment," applies as well to cases of commitment under civil as those of criminal process. See Chief Justice Marshall, 2 Brocken, C. C. R. 447. *Ex parte Cabrera*, 1 Wash. C. C. R. 232. *United States v. French*, 1 Gallis. C. C. R. 2. *Holmes v. Jennison*, Governor of the State of Vermont, 14 Peters, 640.

(a) It is sufficient for one party to suggest that the other is in possession of a paper, which he has, under the act of Congress, given him notice to produce at the trial, without offering other proof of the fact; and the party so called upon must discharge himself of the consequences of not producing it, by affidavit or other proof that he has it not in his power to produce it. *Hylton v. Brown*, 1 Wash. C. C. R. 298.

The court will not, upon a notice of the defendant to the plaintiff to produce a title paper to the land in dispute, which is merely to defeat the plaintiff's title, compel him to do so; unless the defendant first shows title to the land. Merely showing a right of possession is not sufficient to entitle him to the aid of a court of chancery, or of the Supreme Court, to compel a discovery of papers which are merely to defeat the plaintiff's title without strengthening the defendant's. It is sufficient, in order to entitle him to call for papers to show the title to the land, although none is shown in the papers. *Ibid*.

Where one party in a cause wishes the production of papers supposed to be in the possession of the other, he must give notice to produce them: if not produced, he may give inferior evidence of their contents. But if it is his intention to nonsuit the plaintiff, or if the plaintiff requiring the papers means to obtain a judgment by default, under the 15th section of the judicial act, he is bound to give the opposite party notice that he means to move the court for an order upon him to produce the papers, or on a failure so to do, to award a nonsuit or judgment, as the case may be. *Bas v. Steele*, 3 Wash. C. C. R. 381.

No advantage can be taken of the non-production of papers, unless ground is laid for presuming that the papers were, at the time notice was given, in the possession or power of the party to whom notice was given, and that they were pertinent to the issue. In either of the cases, the party to whom notice was given may be required to prove, by his own oath, that the papers are not in his possession or power; which oath may be met by contrary proof according to the rules of equity. *Ibid*.

To entitle the defendant to nonsuit the plaintiff for not obtaining papers which he was noticed to produce, the defendant must first obtain an order of the court, under a rule that they should be produced. But this order need not be absolute when moved for, but may be nisi, unless cause be shown at the trial. *Dunham v. Riley*, 4 Wash. C. C. R. 126.

Notice to the opposite party to produce on the trial all letters in his possession, relating to monies received by him under the award of the commissioners under the Florida treaty, is sufficiently specific as they described their subject matter. If to such notice the party answer on oath that he has not a particular letter in his possession, and after diligent search could find none such, it is sufficient to prevent the offering of secondary proof of its contents. The party cannot be asked, or compelled to answer whether he ever had such a letter in his possession. *Vasse v. Millin*, 4 Wash. C. C. R. 519.

(b) The equity jurisdiction of the courts of the United States is independent of the local law of any State, and is the same in nature and extent as the equity jurisdiction of England from which it is derived. Therefore it is no objection to this jurisdiction, that there is a remedy under the local law. *Gordon v. Hobart*, 2 Sumner's C. C. R. 401.

If a case is cognizable at common law, the defendant has a right of trial by jury, and a suit upon it cannot be sustained in equity. *Baker v. Biddle*, 1 Baldwin's C. C. R. 405.



Sec. 17. *And be it further enacted*, That all the said courts of the United States shall have power to grant new trials, in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law; (a) and shall have power to impose and administer all necessary oaths or affirmations, and to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or bearing before the same; (b) and to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States.

Courts may grant new trials.

Act of March 2, 1831, ch. 89.

Sec. 18. *And be it further enacted*, That when in a circuit court, judgment upon a verdict in a civil action shall be entered, execution may on motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as they may judge proper, be stayed forty-two days from the time of entering judgment, to give time to file in the clerk's office of said court, a petition for a new trial. And if such petition be there filed within said term of forty-two days, with a certificate thereon from either of the judges of such court, that he allows the same to be filed, which certificate he may make or refuse at his discretion, execution shall of course be further stayed to the next session of said court. (c) And if a new trial be granted, the former judgment shall be thereby rendered void.

Execution may be stayed on conditions.

Sec. 19. *And be it further enacted*, That it shall be the duty of circuit courts, in causes in equity and of admiralty and maritime jurisdiction, to cause the facts on which they found their sentence or decree, fully to appear upon the record either from the pleadings and decree itself, or a state of the case agreed by the parties, or their counsel, or if they disagree by a stating of the case by the court.

Facts to appear on record.

Altered by act of March 3, 1803, chap. 40.

Sec. 20. *And be it further enacted*, That where in a circuit court, a plaintiff in an action, originally brought there, or a petitioner in equity, other than the United States, recovers less than the sum or value of five hundred dollars, or a libellant, upon his own appeal, less than the sum or value of three hundred dollars, he shall not be allowed, but at the discretion of the court, may be adjudged to pay costs.

Costs not allowed unless 500 dollars recovered.

Sec. 21. *And be it further enacted*, That from final decrees in a district court in causes of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of three hundred dollars, exclusive of costs, an appeal shall be allowed to the next circuit court,

Appeals from the district to the circuit court where matter in dispute exceeds 300 dollars.

There cannot be concurrent jurisdiction at law and equity, where the right and remedy are the same; but equity may proceed in aid of the remedy at law, by incidental and auxiliary relief; if the remedy at law is complete. Its jurisdiction is special, limited and defined; not as in England, where it depends on usage. *Ibid.*

The 16th section of the judiciary law is a declaratory act settling the law as to cases of equity jurisdiction, in the nature of a proviso, limitation or exception to its exercise. If the plaintiff have a plain, adequate and complete remedy at law, the case is not a suit in equity, under the constitution, or the judiciary act. *Ibid.*

Though the rules and principles established in English Chancery at the revolution, are adopted in the federal courts, the changes introduced there since, are not followed here; especially in matters of jurisdiction, as to which the 16th section of the act of 1789 is imperative. *Ibid.*

(a) New trials. *Calder v. Bull and Wife*, 9 Dall. 336; 1 Cond. Rep. 172. *Arnold v. Jones*, Bee's Rep. 104.

(b) Contempt of court. The courts of the United States have no common law jurisdiction of crimes against the United States. But independent of statutes, the courts of the United States have power to fine for contempts, and imprison for contumacy, and to enforce obedience to their orders, &c. *The United States v. Hudson et al.*, 7 Cranch, 32; 2 Cond. Rep. 405.

By an act passed March 2, 1831, chap. 89, it is enacted, that the power of the courts of the United States to punish for contempts shall not extend to any cases, except to misbehaviour in the presence of the court, or so near to the court as to obstruct the administration of justice, or the misbehaviour of the officers of the court in their official transactions, and disobedience or resistance by any officer of the court, party, juror, witness or any person to any writ, process, order or decree of the court. Indictments may be presented against persons impeding the proceedings of the court, &c. See the statute.

(c) Execution. The 14th section of the judiciary act of September 24, 1789, chap. 20, authorizes the courts of the United States to issue writs of execution upon judgments which have been rendered. This section provides only for the issuing of the writ, and directs no mode of proceeding by the officer obeying its command. *Bank of the United States v. Halstead*, 10 Wheat. 51; 6 Cond. Rep. 22.

Altered by the
2d section of the
act of March 3,
1803, chap. 40.
[Obsolete.]

Final decrees
re-examined
above 50 dol-
lars.

Altered by the
2d section of the
act of March 3,
1803, chap. 40.

And suits in
equity, exceed-
ing 2000 dollars
in value.

to be held in such district. *Provided nevertheless*, That all such appeals from final decrees as aforesaid, from the district court of Maine, shall be made to the circuit court, next to be holden after each appeal in the district of Massachusetts.

Sec. 22. *And be it further enacted*, That final decrees and judgments in civil actions in a district court, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, may be re-examined, and reversed or affirmed in a circuit court, holden in the same district, upon a writ of error, whereto shall be annexed and returned therewith at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and prayer for reversal, with a citation to the adverse party, signed by the judge of such district court, or a justice of the Supreme Court, the adverse party having at least twenty days' notice. (a) And upon a like process, may final judgments and decrees in civil actions, and suits in equity in a circuit court, brought there by original process, or removed there from courts of the several States, or removed there by appeal from a district court where the matter in dispute exceeds the sum or value of two thousand dollars, exclusive of costs, be re-examined and reversed or affirmed in the Supreme Court, the citation being in such case signed by a judge of such circuit court, or justice of the Supreme Court, and the adverse party having at least thirty days' notice. (b) But there shall be no rever-

(a) The rules, regulations and restrictions contained in the 21st and 22d sections of the judiciary act of 1789, respecting the time within which a writ of error shall be brought, and in what instances it shall operate as a supersedeas, the citation to the opposite party, the security to be given by the plaintiff in error, and the restrictions on the appellate court as to reversals in certain enumerated cases, are applicable to the act of 1803, and are to be substantially observed; except that where the appeal is prayed for at the same time when the decree or sentence is pronounced, a citation is not necessary. *The San Pedro*, 2 Wheat. 132; 4 Cond. Rep. 65.

By the 2d section of the act of March 3, 1803, chap. 40, appeals are allowed from all final judgments or decrees in any of the District courts, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars. Appeals from the Circuit Court to the Supreme Court are allowed when the sum or value, exclusive of costs exceeds \$2000. This section repeals so much of the 19th and 20th sections of the act of 1789, as comes within the purview of those provisions.

By the provisions of the act of April 2, 1816, chap. 39, appeals from the Circuit Court of the United States for the District of Columbia, are allowed when the matter in dispute in the cause exceeds \$1000, exclusive of costs.

(b) The following cases have been decided on the questions which have arisen as to the value in controversy, in a case removed by writ of error or appeal.

The verdict and judgment do not ascertain the matter in dispute between the parties. To determine this, recurrence must be had to the original controversy; to the matter in dispute when the action was instituted. *Wilson v. Daniel*, 3 Dall. 40; 1 Cond. Rep. 125.

Where the value of the matter in dispute did not appear in the record, in a case brought by writ of error, the court allowed affidavits to be taken to prove the same, on notice to the opposite party. The writ of error not to be a supersedeas. *Course v. Stead's Ex'ors*, 4 Dall. 22; 1 Cond. Rep. 217; 4 Dall. 20; 1 Cond. Rep. 215.

The Supreme Court will permit viva voce testimony to be given of the value of the matter in dispute, in a case brought up by a writ of error or by appeal. *The United States v. The Brig Union et al.*, 4 Cranch, 216; 2 Cond. Rep. 81.

The plaintiff below claimed more than \$2000 in his declaration, but obtained a verdict for a less sum. The appellate jurisdiction of the Supreme Court depends on the sum or value in dispute between the parties, as the case stands on the writ of error in the Supreme Court; not on that which was in dispute in the Circuit Court. If the writ of error be brought by the plaintiff below, then the sum the declaration shows to be due may still be recovered, should the judgment for a smaller sum be reversed; and consequently the whole sum claimed is in dispute. *Smith v. Honey*, 3 Peters, 460; *Gordon v. Ogden*, 3 Peters, 33.

In cases where the demand is not for money, and the nature of the action does not require the value of the thing to be stated in the declaration, the practice of the courts of the United States has been to allow the value to be given in evidence. *Ex parte Bradstreet*, 7 Peters, 634.

The onus probandi of the amount in controversy, to establish the jurisdiction of the Supreme Court in a case brought before it by writ of error, is upon the party seeking to obtain the revision of the case. He may prove that the value exceeds \$2000, exclusive of costs. *Hagan v. Folson*, 10 Peters, 160.

The Supreme Court has no jurisdiction in a case in which separate decrees have been entered in the Circuit Court for the wages of seamen, the decree in no one case amounting to \$2000, although the amount of the several decrees exceed that sum, and the seamen in each case claimed under the same contract. *Oliver v. Alexander*, 6 Peters, 143. See *Scott v. Lunt's Adm'rs*, 6 Peters, 349.

The Supreme Court will not compel the hearing of a cause unless the citation be served thirty days before the first day of the term. *Welsh v. Mandeville*, 5 Cranch, 321; 2 Cond. Rep. 268.

A citation must accompany the writ of error. *Lloyd v. Alexander*, 1 Cranch, 365; 1 Cond. Rep. 334.

When an appeal is prayed during the session of the court, a citation to the appellee is not necessary. *Riley, appellant, v. Lamar et al.*, 2 Cranch, 344; 1 Cond. Rep. 419.

said in either court on such writ of error for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or such plea to a petition or bill in equity, as is in the nature of a demurrer, or for any error in fact. And writs of error shall not be brought but within five years after rendering or passing the judgment or decree complained of, or in case the person entitled to such writ of error be an infant, *feme covert*, *non compos mentis*, or imprisoned, then within five years as aforesaid, exclusive of the time of such disability. (a) And every justice or judge signing a citation on any writ of error as aforesaid, shall take good and sufficient security, that the plaintiff in error shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good. (b)

SEC. 23. *And be it further enacted*, That a writ of error as aforesaid shall be a supersedeas and stay execution in cases only where the writ of error is served, by a copy thereof being lodged for the adverse party in the clerk's office where the record remains, within ten days, Sundays exclusive, after rendering the judgment or passing the decree complained of. Until the expiration of which term of ten days, executions shall not issue in any case where a writ of error may be a supersedeas; and whereupon such writ of error the Supreme or a circuit court shall affirm a judgment or decree, they shall adjudge or decree to the respondent in error just damages for his delay, and single or double costs at their discretion. (c)

SEC. 24. *And be it further enacted*, That when a judgment or decree shall be reversed in a circuit court, such court shall proceed to render such judgment or pass such decree as the district court should have rendered or passed; and the Supreme Court shall do the same on reversals therein, except where the reversal is in favour of the plaintiff, or petitioner in the original suit, and the damages to be assessed, or matter to be decreed, are uncertain, in which case they shall remand the cause for a final decision. And the Supreme Court shall not issue execution in causes that are removed before them by writs of error, but shall send a special mandate to the circuit court to award execution thereupon.

SEC. 25. *And be it further enacted*, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, (d) or where is drawn in question the construction of any

Writ of error limited.

Plaintiff to give security.
Act of December 12, 1794, chap. 3.

Writ of error a supersedeas.

Judgment or decree reversed.

Supreme court not to issue execution but mandate.

Cases in which judgment and decrees of the highest court of a state may be examined by the supreme court, on writ of error.

(a) An appeal under the judiciary acts of 1789 and 1803, was prayed for and allowed within five years; held to be valid, although the security was not given within five years. The mode of taking the security and the time of perfecting it, are exclusively within the control of the court below. *The Dos Hermanos*, 10 Wheat. 308; 6 Cond. Rep. 109.

(b) By the act of December 12, 1794, chap. 3, the security required to be taken on signing a citation on any writ of error which shall not be a supersedeas, and stay execution, shall only be for an amount which will be sufficient to answer for costs.

(c) Supersedeas. The Supreme Court will not quash an execution issued by the court below to enforce its decree, pending a writ of error, if the writ be not a supersedeas to the decree. *Wallen v. Williams*, 7 Cranch, 278; 2 Cond. Rep. 491.

(d) In delivering the opinion of the Supreme Court in the case of *Fisher v. Cockrell*, 5 Peters, 243, Mr. Chief Justice Marshall said: "In the argument the court has been admonished of the jealousy with which the States of the Union view the revising power entrusted by the constitution and laws to this tribunal. To observations of this character the answer uniformly has been that the course of the judicial department is marked out by law. We must tread the direct and narrow path prescribed for us. As this court has never grasped at ungranted jurisdiction, so it never will, we trust, shrink from that which is conferred upon it."

The appellate power of the Supreme Court of the United States extends to cases pending in the State courts; and the 25th section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases by writ of error, is supported by the letter and spirit of the constitution. *Martin v. Hunter's Lessee*, 1 Wheat. 304; 3 Cond. Rep. 675.

Under the 25th section of the judiciary act of 1789, where the construction of any clause in the con-

H

Proceedings
on reversal.

No writs of
error but as
above mention-
ed.

clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before men-

stitution or any statute of the United States is drawn in question, in any suit in a State court, the decision must be against the title or right set up by the party under such clause in the constitution or statute; otherwise the Supreme Court has no appellate jurisdiction in the case. It is not sufficient that the construction of the statute was drawn in question, and that the decision was against the title. It must appear that the title set up depended on the statute. *Williams v. Norris*, 12 Wheat. 117; 6 Cond. Rep. 462.

If the construction or validity of a treaty of the United States is drawn in question in the State courts, and the decision is against its validity, or against the title set up by either party under the treaty, the Supreme Court has jurisdiction to ascertain that title, and to determine its legal meaning; and is not confined to the abstract construction of the treaty itself. *Ibid.*

The 2d article of the constitution of the United States enables the Supreme Court to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such form that the judicial power is capable of acting upon it. That power is capable of acting only when the subject is submitted to it by a party who asserts his right in the form prescribed by law. It then becomes a case. *Osborn v. The Bank of the United States*, 9 Wheat. 738; 5 Cond. Rep. 741.

The Supreme Court has no jurisdiction under the 25th section of the act of 1789, unless the judgment or decree of the State court be a final judgment or decree. A judgment reversing that of an inferior court, and awarding a *scire facias de novo*, is not a final judgment. *Houston v. Moore*, 3 Wheat. 433; 4 Cond. Rep. 286.

The Supreme Court has no appellate jurisdiction under the 25th section of the judiciary act, unless the right, title, privilege, or exemption under a statute or commission of the United States be specially set up by the party claiming it in the State court, and the decision be against the same. *Montgomery v. Hernandez*, 12 Wheat. 129; 6 Cond. Rep. 475.

It is no objection to the exercise of the appellate jurisdiction under this section, that one party is a State, and the other a citizen of that State. *Cohens v. The State of Virginia*, 6 Wheat. 264; 5 Cond. Rep. 90.

In order to bring a case for a writ of error or an appeal to the Supreme Court from the highest court of a State within the 25th section of the judiciary act, it must appear on the face of the record: 1. That some of the questions stated in that section did arise in the State court. 2. That the question was decided in the State court as required in the section.

It is not necessary that the question shall appear in the record to have been raised, and the decision made in direct and positive terms, *ipsissimis verbis*; but it is sufficient if it appears by clear and necessary intendment that the question must have been raised, and must have been decided, in order to induce the judgment. It is not sufficient to show that a question might have arisen and been applicable to the case, unless it is further shown, on the record, that it did arise and was applied by the State Court to the case. *Crowell v. Randall*, 10 Peters, 368. See also *Williams v. Norris*, 12 Wheat. 117; 6 Cond. Rep. 462. *Jackson v. Lamphire*, 3 Peters, 280. *Menard v. Aspasia*, 5 Peters, 505. *Fisher v. Cockrell*, 5 Peters, 248. *Golston v. Hoyt*, 3 Wheat. 246; 4 Cond. Rep. 244. *Gordon v. Caldwell*, 3 Cranch, 268; 1 Cond. Rep. 524. *Owings v. Norwood's Lessee*, 5 Cranch, 344; 2 Cond. Rep. 275. *Buel et al. v. Van Ness*, 8 Wheat. 312; 5 Cond. Rep. 445. *Miller v. Nicholls*, 4 Wheat. 311; 4 Cond. Rep. 465. *Matthews v. Zane et al.*, 7 Wheat. 164; 5 Cond. Rep. 265. *Gibbons v. Ogden*, 6 Wheat. 448; 5 Cond. Rep. 134.

Under the 25th section of the judiciary act of 1789, three things are necessary to give the Supreme Court jurisdiction of a case brought up by writ of error or appeal: 1. The validity of a statute of the United States, or of authority exercised under a State, must be drawn in question. 2. It must be drawn in question on the ground that it is repugnant to the constitution, treaties and laws of the United States. 3. The decision of the State court must be in favour of its validity. *The Commonwealth Bank of Kentucky v. Griffith et al.*, 14 Peters, 56. See also *Pollard's heirs v. Kibbe*, 14 Peters, 353. *McCluny v. Silberman*, 6 Wheat. 598; 5 Cond. Rep. 197. *Weston et al. v. The City Council of Charleston*, 2 Peters, 449. *Hickie v. Starke et al.*, 1 Peters, 94. *Satterlee v. Mathewson*, 2 Peters, 380. *Wilson et al. v. The Blackbird Creek Marsh Association*, 2 Peters, 245. *Harrie v. Dennie*, 3 Peters, 239. *McBride v. Hoey*, 11 Peters, 167. *Winn's heirs v. Jackson et al.*, 12 Wheat. 135; 6 Cond. Rep. 479. *City of New Orleans v. De Armas*, 9 Peters, 224. *Davis v. Backard*, 6 Peters, 41.



tioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute.(a)

Sec. 26. *And be it further enacted*, That in all causes brought before either of the courts of the United States to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other speciality, where the forfeiture, breach or non-performance shall appear, by the default or confession of the defendant, or upon demurrer, the court before whom the action is, shall render judgment therein for the plaintiff to recover so much as is due according to equity. And when the sum for which judgment should be rendered is uncertain, the same shall, if either of the parties request it, be assessed by a jury.

Sec. 27. *And be it further enacted*, That a marshal shall be appointed in and for each district for the term of four years, but shall be removable from office at pleasure, whose duty it shall be to attend the district and circuit courts when sitting therein, and also the Supreme Court in the district in which that court shall sit.(b) And to execute throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty, and to appoint as there shall be occasion, one or more deputies,(c) who shall be removable from office by the judge of the district court, or the circuit court sitting within the district, at the pleasure of either; and before he enters on the duties of his office, he shall become bound for the faithful performance of the same, by himself and by his deputies before the judge of the district court to the United States, jointly and severally, with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by the district judge, in the sum of twenty thousand dollars, and shall take before said judge, as shall also his deputies, before they enter on the duties of their appointment, the following oath of office: "I, A. B., do solemnly swear or affirm, that I will faithfully execute all lawful precepts directed to the marshal of the district of _____ under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of _____, during my continuance in said office, and take only my lawful fees. So help me God."

Sec. 28. *And be it further enacted*, That in all causes wherein the marshal or his deputy shall be a party, the writs and precepts therein shall be directed to such disinterested person as the court, or any justice or judge thereof may appoint, and the person so appointed, is hereby authorized to execute and return the same. And in case of the death of any marshal, his deputy or deputies shall continue in office, unless otherwise specially removed; and shall execute the same in the name of the deceased, until another marshal shall be appointed and sworn: And the defaults or misfeasances in office of such deputy or deputies in the mean time, as well as before, shall be adjudged a breach of the condition of the bond given, as before directed, by the marshal who appointed

In cases of forfeiture the courts may give judgment according to equity.

Jury to assess damages when the sum is uncertain.

Marshal to be appointed.

Duration of office.

Act of May 15, 1820, ch. 102, § 107, sec. 8.

Deputies removable by the district and circuit courts.

Sureties.

Oath of marshal, and of his deputies.

If marshal, or his deputy, a party to a suit, process to be directed to a person selected by the court.

Deputies to continue in office on the death of the marshal. Defaults of deputies.

(a) *Williams v. Norris*, 12 Wheat. 117; 6 Cond. Rep. 463.

(b) A marshal is not removed by the appointment of a new one, until he receives notice of such appointment. All acts done by the marshal after the appointment of a new one, before notice, are good; but his acts subsequent to notice are void. *Wallace's C. C. R.* 119.

It is the duty of a marshal of a court of the United States to execute all process which may be placed in his hand, but he performs this duty at his peril, and under the guidance of law. He must, of course, exercise some judgment in the performance. Should he fail to obey the exigent of the writ without a legal excuse, or should he in its letter violate the rights of others, he is liable to the action of the injured party. *Life and Fire Ins. Comp. of New York v. Adams*, 9 Peters, 573.

(c) A marshal is liable on his official bond for the failure of his deputies to serve original process, but the measure of his liability is the extent of the injury received by the plaintiff, produced by his negligence. If the loss of the debt be the direct legal consequence of a failure to serve the process, the amount of the debt is the measure of the damages; but not so if otherwise. *The United States v. Moore's Adm'rs*, 2 Brocken. C. C. R. 317. See also *Jesse v. Indiana*, 2 Gallis. C. C. R. 311. *Ex parte Jesse Hoyt*, collector, Sec., 13 Peters, 279.

Powers of the executor or administrator of deceased marshals.

Marshal's power after removal.

Trial of cases punishable with death to be had in county.

Jurors by lot. Act of May 13, 1800, ch. 61.

Writs of venire facias from clerk's office.

Juries de talibus, &c.

Mode of proof

Act of April 29, 1802, ch. 31, § 26.

Depositions de bene esse.

them; and the executor or administrator of the deceased marshal shall have like remedy for the defaults and misfeasances in office of such deputy or deputies during such interval, as they would be entitled to if the marshal had continued in life and in the exercise of his said office, until his successor was appointed, and sworn or affirmed: And every marshal or his deputy when removed from office, or when the term for which the marshal is appointed shall expire, shall have power notwithstanding to execute all such precepts as may be in their hands respectively at the time of such removal or expiration of office; and the marshal shall be held answerable for the delivery to his successor of all prisoners which may be in his custody at the time of his removal, or when the term for which he is appointed shall expire, and for that purpose may retain such prisoners in his custody until his successor shall be appointed and qualified as the law directs. (a)

Sec. 29. *And be it further enacted*, That in cases punishable with death, the trial shall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence. (b) And jurors in all cases to serve in the courts of the United States shall be designated by lot or otherwise in each State respectively according to the mode of forming juries therein now practised, so far as the laws of the same shall render such designation practicable by the courts or marshals of the United States; and the jurors shall have the same qualifications as are requisite for jurors by the laws of the State of which they are citizens, to serve in the highest courts of law of such State, and shall be returned as there shall be occasion for them, from such parts of the district from time to time as the court shall direct, so as shall be most favourable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burthen the citizens of any part of the district with such services. And writs of *venire facias* when directed by the court shall issue from the clerk's office, and shall be served and returned by the marshal in his proper person, or by his deputy, or in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as the court shall specially appoint for that purpose, to whom they shall administer an oath or affirmation that he will truly and impartially serve and return such writ. And when from challenges or otherwise there shall not be a jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court where such defect of jurors shall happen, return *jurymen de talibus circumstantibus* sufficient to complete the pannel; and when the marshal or his deputy are disqualified as aforesaid, jurors may be returned by such disinterested person as the court shall appoint.

Sec. 30. *And be it further enacted*, That the mode of proof by oral testimony and examination of witnesses in open court shall be the same in all the courts of the United States, as well in the trial of causes in equity and of admiralty and maritime jurisdiction, as of actions at common law. And when the testimony of any person shall be necessary in any civil cause depending in any district in any court of the United States, who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial, or is ancient or very infirm, the deposition of such person may be taken *de bene esse* before any justice or judge of any of the courts of the United States,

(a) If a debtor committed to the State jail under process of the courts of the United States escapes, the marshal is not liable. *Randolph v. Donaldson*, 9 Cranch, 76; 3 Cond. Rep. 280.

(b) The Circuit Courts of the United States are bound to try all crimes committed within the district, which are duly presented before it; but not to try them in the county where they have been committed. *The United States v. Wilson and Porter*, Baldwin's C. C. R. 78.



or before any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States, not being of counsel or attorney to either of the parties, or interested in the event of the cause, provided that a notification from the magistrate before whom the deposition is to be taken to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, be first made out and served on the adverse party or his attorney as either may be nearest, if either is within one hundred miles of the place of such caption, allowing time for their attendance after notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel. (a) And in causes of admiralty and maritime jurisdiction, or other cases of seizure when a libel shall be filed, in which an adverse party is not named, and depositions of persons circumstanced as aforesaid shall be taken before a claim be put in, the like notification as aforesaid shall be given to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice if any given to the adverse party, be by him the said magistrate sealed up and directed to such court, and remain under his seal until opened in court. (b) And any person may be compelled to appear and depose as aforesaid in the same manner as to appear and testify in court. And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in which may be appealed from, if either party shall suggest to and satisfy the court that probably it will not be in his power to produce the witnesses there testifying before the circuit court should an appeal be had, and shall move that their testimony be taken down in writing, it shall be so done by the clerk of the court. (c) And

-Adverse party
to be notified.

Notice in admi-
rally and mari-
time causes.

Agent notified.

Depositions
retained.

Persons may
be compelled to
appear and tes-
tify.

Appeal al-
lowed.

(a) The following cases have been decided relating to depositions taken under the provisions of this act: That the deponent is a seaman on board a gun-boat in the harbour, and liable to be ordered to some other place, and not to be able to attend the court at the time of sitting, is not a sufficient reason for taking his deposition under the act of September 24, 1789, chap. 20.

If it appear on the face of the deposition taken under the act of Congress, that the officer taking the same, was authorized by the act, it is sufficient in the first instance, without any proof that he was such officer. *Ruggles v. Buckner*, 1 Paine's C. C. R. 333.

Objections to the competency of the witness whose deposition is taken under the act of 1789, should be made at the time of taking the deposition, if the party attend, and the objections are known to him, in order that they may be removed; otherwise he will be presumed to waive them. *United States v. Hair-pencils*, 1 Paine's C. C. R. 400.

A deposition taken under the 30th section of the act of 1789 cannot be made on evidence, unless the judge before whom it was taken, certify that it was reduced to writing by himself, or by the witness in his presence. *Pettibone v. Derringer*, 4 Wash. C. C. R. 215. See *United States v. Smith*, 4 Day, 121. *North Carolina Cases*, 81.

The authority given by the act of 1789, to take depositions of witnesses in the absence of the opposite party, is in derogation of the rules of common law, and has always been construed strictly; and therefore it is necessary to establish that all the requisites have been complied with, before such testimony can be admitted. *Hell v. Morrison et al.*, 1 Peters, 351. *The Patapsco Ins. Comp. v. Southgate*, 5 Peters, 604. *The United States v. Coolidge*, 1 Gallis. C. C. R. 483. *Evans v. Hetrick*, 3 Wash. C. C. R. 408. *Thomas and Henry v. The United States*, 1 Brocken. C. C. R. 367.

The provisions of the 30th section of the act of 1789, as to taking depositions, *de bene esse*, does not apply to cases pending in the Supreme Court, but only to cases in the Circuit and District Courts. *The Argo*, 2 Wheat. 287; 4 Cond. Rep. 119.

Where there is an attorney on record, notice must in all cases be given to him. *Ibid.*

The deposition of a person residing out of the State, and more than one hundred miles from the place of trial, cannot be read in evidence. *Bleeker v. Bond*, 3 Wash. C. C. R. 529. See *Buddicum v. Kirke*, 3 Cranch, 293; 1 Cond. Rep. 535.

(b) It is a fatal objection to a deposition taken under the 30th section of the act of 1789, that it was opened out of court. *Beale v. Thompson*, 3 Cranch, 70; 3 Cond. Rep. 35.

(c) Since the act of March 3, 1803, chap. 40, in admiralty as well as in equity cases carried up to the

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Act of March
3, 1803, ch. 40.

Depositions
used in case of
sickness, death,
&c.

Dedimus po-
testatem as
usual.

Executor or
administrator
may prosecute
and defend.

Neglect of
executor or ad-
ministrator to
become a party
to the suit,
judgment to be
rendered.

Executor and
administrator
may have con-
tinuance.

Two plaintiffs.
Surviving
plaintiff may
continue suit.

if an appeal be had, such testimony may be used on the trial of the same, if it shall appear to the satisfaction of the court which shall try the appeal, that the witnesses are then dead or gone out of the United States, or to a greater distance than as aforesaid from the place where the court is sitting, or that by reason of age, sickness, bodily infirmity or imprisonment, they are unable to travel and appear at court, but not otherwise. And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause. *Provided*, That nothing herein shall be construed to prevent any court of the United States from granting a *dedimus potestatem* to take depositions according to common usage, when it may be necessary to prevent a failure or delay of justice, (a) which power they shall severally possess, nor to extend to depositions taken in *perpetuam rei memoriam*, which if they relate to matters that may be cognizable in any court of the United States; a circuit court on application thereto made as a court of equity, may, according to the usages in chancery direct to be taken.

Sec. 31. *And be it [further] enacted*, That where any suit shall be depending in any court of the United States, and either of the parties shall die before final judgment, the executor or administrator of such deceased party who was plaintiff, petitioner, or defendant, in case the cause of action doth by law survive, shall have full power to prosecute or defend any such suit or action until final judgment; and the defendant or defendants are hereby obliged to answer thereto accordingly; and the court before whom such cause may be depending, is hereby empowered and directed to hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require. And if such executor or administrator having been duly served with a *scire facias* from the office of the clerk of the court where such suit is depending, twenty days beforehand, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit. (b) And the executor or administrator who shall become a party as aforesaid, shall, upon motion to the court where the suit is depending, be entitled to a continuance of the same until the next term of the said court. And if there be two or more plaintiffs or defendants, and one or more of them shall die, if the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants. (c)

Supreme Court by appeal, the evidence goes with the cause, and it must consequently be in writing. 1 Gallis. C. C. R. 35; 1 Sumner's C. C. R. 328.

(c) When a foreign government refuses to suffer the commission to be executed within its jurisdiction, the Circuit Court may issue letters rogatory for the purpose of obtaining testimony according to the forms and practice of the civil law. Nelson et al. v. The United States, Peters' C. C. R. 265. See Buddicum v. Kirke, 3 Cranch, 293; 1 Cond. Rep. 535.

Depositions taken according to the proviso in the 30th section of the judiciary act of 1789, under a *dedimus potestatem*, according to common usage, when it may be necessary to prevent a failure or delay of justice, are, under no circumstances, to be considered as taken *de bene esse*. *Sergeant's Lessee v. Biddle*, 4 Wheat. 503; 4 Cond. Rep. 522.

(b) This statute embraces all cases of death before final judgment, and of course is more extensive than the 17 Car. 2, and 8 and 9 W. 3. The death may happen before or after plea pleaded, before or after issue joined, before or after verdict, or before or after interlocutory judgment; and in all these cases the proceedings are to be exactly as if the executor or administrator were a voluntary party to the suit. *Hatch v. Eustis*, 1 Gallis. C. C. R. 160.

(c) In real and personal actions at common law, the death of the parties before judgment abates the suit, and it requires the aid of some statutory provision to enable the suit to be prosecuted by or against the personal representatives of the deceased, where the cause of action survives. This is effected by the 31st section of the judiciary act of 1789, chap. 20. *Green v. Watkins*, 8 Wheat. 260; 5 Cond. Rep. 87.

In real actions the death of either party before judgment, abates the suit. The 31st section of the judiciary act of 1789, which enables the action to be prosecuted by or against the representatives of the



Sec. 32. *And be it further enacted*, That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe. (a)

Sec. 33. *And be it further enacted*, That for any crime or offence against the United States, the offender may, by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found agreeably to the usual mode of process against offenders in such state, and at the expense of the United States, be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offence. (b) And copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case; which recognizances the magistrate before whom the examination shall be, may require on pain of imprisonment. And if such commitment of the offender, or the witnesses shall be in a district other than that in which the offence is to be tried, it shall be the duty of the judge of that district where the delinquent is imprisoned, seasonably to issue, and of the marshal of the same district to execute, a warrant for the removal of the offender, and the witnesses, or either of them, as the case may be, to the district in which the trial is to be had. And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which cases it shall not be admitted but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence, and the usages of law. And if a person committed by a justice of the supreme or a judge of a district court for an offence not punishable with death, shall afterwards procure bail, and there be no judge

Writs shall not abate for defect of form.

Exceptions.

Courts may amend imperfections.

Criminals against U. S. arrested by any justice of the peace.

Act of March 2, 1793, ch. 22.
Act of July 16, 1793, ch. 83.
Recognizance to be returned to the clerk's office.

Offender may be removed by warrant.

Bail admitted.

Bail, how taken.

deceased, when the cause of action survives, is clearly confined to personal actions. *Macker's heirs v. Thomas*, 7 Wheat. 530; 5 Cond. Rep. 334.

(a) The 32d section of the act of 1789, allowing amendments, is sufficiently comprehensive to embrace causes of appellate as well as original jurisdiction; and there is nothing in the nature of an appellate jurisdiction, proceeding according to the common law, which forbids the granting of amendments. 1 *Gallis*. C. C. R. 22.

If the amendment is made in the Circuit Court, the cause is heard and adjudicated in that court, and upon appeal by the Supreme Court on the new allegation. But if the amendment is allowed by the Supreme Court, the cause is remanded to the Circuit Court, with directions to allow the amendment to be made. *The Mariann Flora*, 11 Wheat. 1; 6 Cond. Rep. 201.

By the provisions of the act of Congress a variance which is merely matter of form may be amended at any time. *Scull v. Biddle*, 2 Wash. C. C. R. 200. See *Smith v. Jackson*, 1 Paine's C. C. R. 486. *Ex parte Bradstreet*, 7 Peters, 634. *Randolph v. Barrett*, 16 Peters, 136. *Hozey v. Buchanan*, 16 Peters, 215. *Woodward v. Brown*, 13 Peters, 1.

(b) The Supreme Court of the United States has jurisdiction, under the constitution and laws of the United States, to bail a person committed for trial on a criminal charge by a district judge of the United States. *The United States v. Hamilton*, 3 Dall. 17.

The circumstances of the case must be very strong, which will, at any time, induce a court to admit a person to bail, who stands charged with high treason. *The United States v. Stewart*, 2 Dall. 343.

Laws of States
rules of deci-
sion.

Parties may
manage their
own cause.

Attorney of
the U. S. for
each district.

His duties.

Compensation.

of the United States in the district to take the same, it may be taken by any judge of the supreme or superior court of law of such state.

SEC. 34. *And be it further enacted*, That the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply. (a)

SEC. 35. *And be it further enacted*, That in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as a compensation for his

(a) The 34th section of the judiciary act of 1789, does not apply to the process and practice of the courts. It merely furnishes a decision, and is not intended to regulate the remedy. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

In construing the statutes of a State, infinite mischief would ensue, should the federal courts observe a different rule from that which has long been established in the State. *McKeen v. Delancy's lessee*, 5 Cranch, 22; 2 Cond. Rep. 179.

In cases depending on the statutes of a State, and more especially in those respecting the titles to land, the federal courts adopt the construction of the State, where that construction is settled or can be ascertained. *Polk's Lessee v. Wendall*, 9 Cranch, 87; 3 Cond. Rep. 288.

The Supreme Court uniformly acts under a desire to conform its decisions to the State courts on their local law. *Mutual Assurance Society v. Watts*, 1 Wheat. 279; 3 Cond. Rep. 570.

The Supreme Court holds in the highest respect, decisions of State Courts upon local laws, forming rules of property. *Shipp et al. v. Miller's heirs*, 2 Wheat. 316; 4 Cond. Rep. 139.

When the construction of the statute of the State relates to real property, and has been settled by any judicial decision of the State where the land lies, the Supreme Court, upon the principles uniformly adopted by it, would recognize the decision as part of the local law. *Gardner v. Collins*, 2 Peters, 58.

In construing local statutes respecting real property, the courts of the Union are governed by the decisions of State tribunals. *Thatcher et al. v. Powell*, 6 Wheat. 119; 5 Cond. Rep. 28.

The courts of the United States, in cases depending on the laws of a particular State, will in general adopt the construction given by the courts of the State, to those laws. *Elmendorf v. Taylor*, 10 Wheat. 152; 6 Cond. Rep. 47.

Under the 34th section of the judiciary act of 1789, the acts of limitation of the several States where no special provision has been made by Congress, form rules of the decision in the courts of the United States; and the same effect is given to them as is given in the State courts. *McCluny v. Silliman*, 3 Peters, 270.

The statute laws of the States must furnish the rules of decision to the federal courts, as far as they comport with the laws of the United States, in all cases arising within the respective States; and a fixed and received construction of these respective statute laws in their own courts, makes a part of such statute law. *Shelby et al. v. Guy*, 11 Wheat. 361; 6 Cond. Rep. 345.

The Supreme Court adopts the local law of real property as ascertained by the decisions of State courts; whether those decisions are grounded on the construction of the statutes of the State, or from a part of the unwritten law of the State, which has become a fixed rule of property. *Jackson v. Chew*, 12 Wheat. 153; 6 Cond. Rep. 489.

Soon after the decision of a case in the Circuit Court for the district of Virginia, a case was decided in the court of appeals of the State, on which the question on the execution laws of Virginia was elaborately argued, and deliberately decided. The Supreme Court, according to its uniform course, adopts the construction of the act, which is made by the highest court of the State. *The United States v. Morrison*, 4 Peters, 124.

The Supreme Court has uniformly adopted the decisions of the State tribunals, respectively, in all cases where the decision of a State court has become a rule of property. *Green v. Neal*, 6 Peters, 291.

In all cases arising under the constitution and laws of the United States, the Supreme Court may exercise a revising power, and its decisions are final and obligatory on all other tribunals, State as well as federal. A State tribunal has a right to examine any such questions, and to determine thereon, but its decisions must conform to those of the Supreme Court, or the corrective power of that court may be exercised. But the case is very different when the question arises under a local law. The decision of this question by the highest tribunal of a State, should be considered as final by the Supreme Court; not because the State tribunal has power, in such a case, to bind the Supreme Court, but because, in the language of the court in *Shelby v. Guy*, 11 Wheat. 361, a fixed and received construction by a State, in its own courts, makes a part of the statute law. *Ibid.* See also *Smith v. Clapp*, 15 Peters, 125. *Watkins v. Holman et al.*, 16 Peters, 25. *Long v. Palmer*, 16 Peters, 65. *Golden v. Price*, 3 Wash. C. C. R. 213. *Campbell v. Claudius*, Peters' C. C. R. 434. *Henderson and Wife v. Griffin*, 5 Peters, 151. *Costes' executrix v. Muse's adm'or.*, 1 Brocken. C. C. R. 539. *Parsons v. Bedford et al.*, 3 Peters, 433.



services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided. (a)

APPROVED, September 24, 1789.

Attorney General of the U. S.

Duties.

Act of May 29, 1830, ch. 153.

Compensation.

STATUTE I.

CHAP. XXI.—An Act to regulate Processes in the Courts of the United States.

Sept. 29, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all writs and processes issuing from a supreme or a circuit court shall bear test of the chief justice of the supreme court, and if from a district court, shall bear test of the judge of such court, and shall be under the seal of the court from whence they issue; and signed by the clerk thereof. The seals of the supreme and circuit courts to be provided by the supreme court, and of the district courts, by the respective judges of the same.

Act of May 20, 1790, ch. 13.

Act of Feb. 18, 1791, ch. 8.

Writs to bear test of the Chief Justice.

To be under the seal of the Court from which they issue.

Act of May 8, 1792, ch. 36.

Act of May 19, 1828, ch. 68. Forms of writs and executions

SEC. 2. *And be it further enacted,* That until further provision shall be made, and except where by this act or other statutes of the United States is otherwise provided, the forms of writs and executions, except their style, and modes of process and rates of fees, except fees to judges, in the circuit and district courts, in suits at common law, shall be the same in each state respectively as are now used or allowed in the supreme courts of the same. (b) And the forms and modes of proceedings in

(a) The acts relating to the compensation of the Attorney General of the United States are: Act of March 2, 1797; act of March 2, 1792, chap. 38; act of February 20, 1804, chap. 12; act of February 20, 1819, chap. 27; act of May 29, 1830, chap. 153, sec. 10; act of 1789, ch. 18.

(b) The 34th section of the judiciary act of 1789, authorizes the courts of the United States to issue writs of execution as well as other writs. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

Whenever, by the state laws in force in 1789, a capias might issue from a state court, the acts of 1789 and 1792, extending in terms to that species of writ, must be understood to have adopted its use permanently in the federal courts. *Bank of the United States v. January*, 10 Wheat. 66—in note.

The process act of 1792, chap. 36, is the law which regulates executions issuing from the courts of the United States, and it adopts the practice of the supreme courts of the States existing in 1789, as the rule for governing proceedings on such executions, subject to such alterations as the Supreme Court of the United States may make; but not subject to the alterations which have since taken place in the State laws and practice. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

At an early period after the organization of the federal courts, the rules of practice in the State courts, which were similar to the English practice, were adopted by the judges of the Circuit Court. A subsequent change in the practice of the State courts will not authorize a departure from the rules first adopted in the Circuit Court. 1 Peters' C. C. R. 1.

Whenever by the laws of the United States a defendant may be arrested, the process of arrest employed in the State may be adopted. *Burr's trial*, 431.

The process act of 1828 was passed shortly after the decision of the Supreme Court of the United States, in the case of *Wayman v. Southard*, and the *Bank of the United States v. Halstead*, and was intended as a legislative sanction of the opinions of the court in those cases. The power given to the courts of the United States to make rules and regulations on final process, so as to conform the same to the laws of the States on the same subject, extends to future legislation; and as well to the modes of proceeding on executions as to the forms of writs. *Ross and King v. Duval et al.*, 13 Peters, 45.

The first judiciary act of 1789, chap. 20, does not contemplate compulsive process against any person, in any district, unless he be an inhabitant of, or found within the same district at the time of serving the writ. *Picquet v. Swann*, 5 Mason's C. C. R. 35.

Congress have by the constitution, exclusive authority to regulate proceedings in the courts of the United States, and the States have no authority to control those proceedings, except so far as the State process acts are adopted by Congress, or by the courts of the United States under the authority of Congress. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

The laws of the United States authorize the courts of the United States so to alter the form of process of execution used in the Supreme Court of the United States in 1789, as to subject to executions

to be the same as used in the Supreme Courts of the States.

Fees to be the same as in the Supreme Courts of the States.

Limitation.

causes of equity, and of admiralty and maritime jurisdiction, (a) shall be according to the course of the civil law; and the rates of fees the same as are or were last allowed by the states respectively in the court exercising supreme jurisdiction in such causes. (b) *Provided*, That on judgments in any of the cases aforesaid where different kinds of executions are issuable in succession, a *capias ad satisfaciendum* being one, the plaintiff shall have his election to take out a *capias ad satisfaciendum* in the first instance and be at liberty to pursue the same until a tender of the debt and costs in gold or silver shall be made.

SEC. 3. *And be it further enacted*, That this act shall continue in force until the end of the next session of Congress, and no longer.

APPROVED, September 29, 1789.

STATUTE I.

Sept. 29, 1789.

Act of Sept. 1, 1789, ch. 11.
Repealed by Act of February 18, 1793, ch. 8.
Goods unladen by permit and transported to a landing in the same district, to be accompanied with a certificate from the inspector or other proper officer.

CHAP. XXII.—*An Act to explain and amend an Act, intitled "An Act for registering and clearing Vessels, regulating the Coasting Trade, and for other purposes."*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when any goods, wares or merchandise of foreign growth or manufacture, shall be unladen from any ship or vessel in virtue of a permit obtained for that purpose, and shall be put into a craft or vessel, with intent to be transported to a landing within the same district, it shall be the duty of the inspector, or other officer attending the unloading of such goods, wares and merchandise, to deliver to the master or commander of every such craft or vessel, a certificate of such goods, wares and merchandise having been duly entered, and a permit granted therefor; and such certificate shall contain a description of all the packages with their marks and numbers, and shall authorize the transportation and landing of the same, at any landing within the same district, without any further fee or permit, any thing in the said recited act to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That so much of the twenty-second section of the said recited act, as exempts vessels of less than twenty,

issuing out of the courts of the United States, lands and other property not thus subject by the State laws in force at that time. *Bank of the United States v. Halsted*, 10 Wheat. 51; 6 Cond. Rep. 22.

See *Fullerton v. The Bank of the United States*, 1 Peters, 604. *Yeaton v. Lenoix*, 8 Peters, 123. *Toland v. Sprague*, 12 Peters, 300.

The process act of 1825, expressly adopts the mesne process and modes of proceeding in suits at common law, then existing in the highest State court, under the State laws, which of course included all the regulations of the State laws as to bail, and exemption of the party from arrest and imprisonment. In regard also to writs of execution, and other final process, and "the proceedings thereupon," it adopts an equally comprehensive language, and declares they shall be the same as were then used in the courts of the State. *Beers v. Haughton*, 9 Peters, 329. *The Lessee of Walden v. Craig's heirs*, 14 Peters, 147. *The United States v. Knight*, 14 Peters, 301. *Amis v. Smith*, 16 Peters, 303.

So far as the acts of Congress have adopted the forms of process and modes of proceeding and pleading in the State courts, or have authorized the courts to adopt them, and have actually adopted them, they are obligatory; and no further. But no court of the United States is authorized to adopt by rule any provision of State laws which are repugnant to, or incompatible with the positive enactment of Congress upon the jurisdiction, or practice, or proceedings of such courts. *Keary et al. v. The Farmers and Mechanics Bank of Memphis*, 16 Peters, 89. *Duncan v. Darst*, 17 Peters, 209.

(a) The act regulating processes in the courts of the United States, provides that the forms and modes of proceeding in the courts of equity, and in those of admiralty and maritime jurisdiction, shall be according to the principles, rules, and usages which belong to courts of equity, and to courts of admiralty, respectively, as contradistinguished from the courts of common law, subject, however, to alterations by the courts. This act has been generally understood to adopt the principles, rules, and usages of the court of chancery in England. *Manro v. Almedia*, 10 Wheat. 473; 6 Cond. Rep. 190.

(b) The compensation to clerks of courts are regulated by the acts of March 3, 1791, chap. 22, sec. 1; act of May 8, 1792, chap. 36, sec. 3; act of February 23, 1799, chap. 19, sec. 3; act of April 18, 1811, chap. 79; act of March 8, 1824, chap. 26; act of March 8, 1841, chap. 35. Compensation of Marshals, act of March 3, 1791, chap. 22, sec. 1; act of May 8, 1792, chap. 36, sec. 8; act of February 28, 1799, chap. 19, sec. 2; act of April 18, 1814, chap. 79; act of March 8, 1824, chap. 26; act of March 3, 1841, chap. 35.



and not less than five tons burthen, employed between any of the districts of the United States, in any bay or river, and having a license from the collector of the district to which such vessel belongs, from entering and clearing for the term of one year, be extended to vessels not exceeding fifty tons: *provided*, such vessels shall not have on board goods, wares or merchandise, other than such as are actually the growth or produce of the United States.

SEC. 3. *And be it further enacted*, That so much of an act, intituled, "An act to regulate the collection of the duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States," as hath rated the ruble of Russia at one hundred cents, be, and the same is hereby repealed and made null and void.

APPROVED, September 29, 1789.

Exemption of vessels under 20 tons, from entering and clearing extended to vessels of 50 tons having on board goods, &c., the growth or produce of the U. S.

Act of July 31, 1769, ch. 5. 1790, ch. 35, § 75.

Ruble of Russia, rate of. Repealed.

STATUTE I.

Sept. 29, 1789.

CHAP. XXIII.—*An Act making Appropriations for the Service of the present year.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be appropriated for the service of the present year, to be paid out of the monies which arise, either from the requisitions heretofore made upon the several states, or from the duties on impost and tonnage, the following sums, viz. A sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list, under the late and present government; a sum not exceeding one hundred and thirty-seven thousand dollars for defraying the expenses of the department of war: a sum not exceeding one hundred and ninety thousand dollars for discharging the warrants issued by the late board of treasury, and remaining unsatisfied; and a sum not exceeding ninety-six thousand dollars for paying the pensions to invalids.

APPROVED, September 29, 1789.

[Expired.] Specific appropriations of money for expenses of civil list and war department;

also to discharge warrants of late board of treasury, and for pensions to invalids.

STATUTE I.

Sept. 29, 1789.

CHAP. XXIV.—*An Act providing for the payment of the Invalid Pensioners of the United States.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the military pensions which have been granted and paid by the states respectively, in pursuance of the acts of the United States in Congress assembled, to the invalids who were wounded and disabled during the late war, shall be continued and paid by the United States, from the fourth day of March last, for the space of one year, under such regulations as the President of the United States may direct.

APPROVED, September 29, 1789.

Act of July 16, 1790, ch. 27.

[Expired.] Military pensions heretofore paid by the States to be paid from 4th March last for one year, and under what regulations.

STATUTE I.

Sept. 29, 1789.

CHAP. XXV.—*An Act to recognize and adapt to the Constitution of the United States the establishment of the Troops raised under the Resolves of the United States in Congress assembled, and for other purposes therein mentioned.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the establishment contained in the resolve of the late Congress of the third day of October, one thousand seven hundred and eighty-seven, except

[Repealed.]

Act of April 30, 1790, ch. 10, sec. 14.

Establishment of 3d Oct. 1787, recognized for troops in the service of U. S.

Pay and allowance of troops.

as to the mode of appointing the officers, and also as is herein after provided, be, and the same is hereby recognized to be the establishment for the troops in the service of the United States.

SEC. 2. *And be it further enacted*, That the pay and allowances of the said troops be the same as have been established by the United States in Congress assembled, by their resolution of the twelfth of April, one thousand seven hundred and eighty-five.

To take oath to support the Constitution, and bear allegiance to the United States.

SEC. 3. *And be it further enacted*, That all commissioned and non-commissioned officers and privates, who are or shall be in the service of the United States, shall take the following oaths or affirmations, to wit: "I, A. B. do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States." "I, A. B. do solemnly swear or affirm (as the case may be) to bear true allegiance to the United States of America, and to serve them honestly and faithfully against all their enemies or opposers whatsoever, and to observe and obey the orders of the President of the United States of America, and the orders of the officers appointed over me."

Troops to be governed by rules and articles of war.

SEC. 4. *And be it further enacted*, That the said troops shall be governed by the rules and articles of war which have been established by the United States in Congress assembled, or by such rules and articles of war, as may hereafter by law be established.

For protecting frontiers, President may call forth the militia.

SEC. 5. *And be it further enacted*, That for the purpose of protecting the inhabitants of the frontiers of the United States from the hostile incursions of the Indians, the President is hereby authorized to call into service from time to time, such part of the militia of the states respectively, as he may judge necessary for the purpose aforesaid; and that their pay and subsistence while in service, be the same as the pay and subsistence of the troops above mentioned.

Pay and subsistence.

Continuance of this act.

SEC. 6. *And be it further enacted*, That this act shall continue and be in force until the end of the next session of Congress, and no longer.

APPROVED, September 29, 1789.

STATUTE I.

Sept. 29, 1789.

CHAP. XXVII.—*An Act to alter the Time for the next Meeting of Congress.*

[Expired.]

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That after the adjournment of the present session, the next meeting of Congress shall be on the first Monday in January next.

APPROVED, September 29, 1789.

August 26, 1789.

RESOLUTIONS.

Survey directed by act of June 8, 1788, to be made and returned by Secretary of the Treasury without delay.

1. **RESOLVED**, That the Survey directed by Congress in their act of June the sixth, one thousand seven hundred and eighty-eight, be made and returned to the Secretary of the Treasury without delay; and that the President of the United States be requested to appoint a fit person to complete the same, who shall be allowed five dollars per day whilst actually employed in the said service, with the expenses necessarily attending the execution thereof.

APPROVED, August 26, 1789.

Sept. 23, 1789.

Recommendation to the Legislatures of the several States to pass laws making it the duty of keepers of prisons to

2. **RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled**, That it be recommended to the legislatures of the several States to pass laws, making it expressly the duty of the keepers of their jails, to receive and safe keep therein all prisoners committed under the authority of the United States, until they shall be discharged by due course of the laws thereof, under the



like penalties as in the case of prisoners committed under the authority of such States respectively; the United States to pay for the use and keeping of such gaols, at the rate of fifty cents per month for each prisoner that shall, under their authority, be committed thereto, during the time such prisoner shall be therein confined; and also to support such of said prisoners as shall be committed for offences.

APPROVED, September 23, 1789.

receive and keep prisoners committed under authority of the United States.

Sept. 23, 1789.

Secretary of State to procure the statutes of the States.

3. RESOLVED, That it shall be the duty of the Secretary of State, to procure from time to time such of the statutes of the several states as may not be in his office.

APPROVED, September 23, 1789.

The Conventions of a number of the States having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the government will best insure the beneficent ends of its institution—

RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, That the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States, all or any of which articles, when ratified by three fourths of the said legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.:

Amendments to the Constitution of the United States.

ARTICLES in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.

ART. I. After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

ART. II. No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

ART. III. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ART. IV. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ART. V. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ART. VI. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, sup-

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Adopted.

Adopted.

Adopted.

Adopted.



- ported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- Adopted. ART. VII. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.
- Adopted. ART. VIII. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.
- Adopted. ART. IX. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.
- Adopted. ART. X. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
- Adopted. ART. XI. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
- Adopted. ART. XII. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Sept. 29, 1789.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That John White, late a commissioner to settle the accounts between the United States and the states of Pennsylvania, Delaware, and Maryland, and his clerks, John Wright, and Joshua Dawson, be considered as in office until the fourth day of February, one thousand seven hundred and eighty-nine.

APPROVED, September 29, 1789.

CHAP. XX.—An Act to establish the Judicial Courts of the United States.(a)

STATUTE L.
Sept. 24, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the supreme court of the United States shall consist of a chief justice and five associate justices, (b) any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear date on the same day, according to their respective ages.

Supreme court to consist of a chief justice, and five associates.
Two sessions annually.
Precedence.

SEC. 2. *And be it further enacted*, That the United States shall be, and they hereby are divided into thirteen districts, to be limited and called as follows, to wit: one to consist of that part of the State of Massachusetts which lies easterly of the State of New Hampshire, and to be called Maine District; one to consist of the State of New Hampshire, and to be called New Hampshire District; (c) one to consist of the remaining part of the State of Massachusetts, and to be called Massachusetts district; one to consist of the State of Connecticut, and to be called Connecticut District; one to consist of the State of New York, and to be called New York District; one to consist of the State of New Jersey, and to be called New Jersey District; one to consist of the State of Pennsylvania, and to be called Pennsylvania District; one to consist of the State of Delaware, and to be called Delaware District; one to consist of the State of Maryland, and to be called Maryland District; one to consist of the State of Virginia, except that part called the District of Kentucky, and to be called Virginia District; one to consist of the remaining part of the State of Virginia, and to be called Kentucky District; one to consist of the State of South Carolina, and to be called South Carolina District; and one to consist of the State of Georgia, and to be called Georgia District.

Thirteen districts.

Maine.
N. Hampshire.
Massachusetts.

Connecticut.
New York.
New Jersey.
Pennsylvania.
Delaware.
Maryland.

Virginia.
Kentucky.

South Carolina.
Georgia.

SEC. 3. *And be it further enacted*, That there be a court called a District Court, in each of the afore mentioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four

A district court in each district.

(a) The 3d article of the Constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only where the subject is submitted to it by a party who asserts his right in a form presented by law. It then becomes a case. *Osborn et al. v. The Bank of the United States*, 9 Wheat. 733; 5 Cond. Rep. 741.

(b) By the act of April 29, 1802, chap. 31, the Supreme Court was declared to consist of a Chief Justice and six associate Justices, and by the act of March 3, 1837, chap. 34, it was made to consist of a Chief Justice and eight associate Justices.

By the act of April 29, 1802, chap. 31, the provision of the act of September 24, 1789, requiring two annual sessions of the Supreme Court, was repealed, and the 2d section of that act required that the associate Justice of the fourth circuit should attend at Washington on the first Monday of August annually, to make all necessary rules and orders, touching suits and actions depending in the court. This section was repealed by the 7th section of the act of February 28, 1839, chap. 36.

By an act passed May 4, 1828, chap. 37, the sessions of the Supreme Court were directed to commence on the second Monday in January annually, instead of the first Monday in February; and by an act passed June 17, 1844, the sessions of the Supreme Court were directed to commence on the first Monday in December annually.

(c) The jurisdiction and powers of the District Courts have been declared and established by the following acts of Congress: Act of September 24, 1789; act of June 5, 1794, sec. 6; act of May 10, 1800; act of December 31, 1814; act of April 16, 1816; act of April 20, 1818; act of May 16, 1820; act of March 3, 1793.

The decisions of the Courts of the United States on the jurisdiction of the District Courts have been: *The Thomas Jefferson*, 10 Wheat. 423; 8 Cond. Rep. 173. *McDonough v. Danery*, 3 Dall. 188; 1 Cond. Rep. 94. *United States v. La Vengeance*, 3 Dall. 297; 1 Cond. Rep. 132. *Glass et al. v. The Betsey*, 3 Dall. 6; 1 Cond. Rep. 10. *The Alerta v. Blas Morra*, 9 Cranch, 359; 3 Cond. Rep. 425. *The Merino et al.*, 9 Wheat. 391; 5 Cond. Rep. 623. *The Josefa Segunda*, 10 Wheat. 312; 6 Cond. Rep. 111. *The Bolina*, 1 Gallis. C. C. R. 75. *The Robert Fulton*, Paine's C. C. R. 620. *Jansen v. The Vrouw Christiant Madalena*, Bee's D. C. R. 11. *Jennings v. Carson*, 4 Cranch, 2; 2 Cond. Rep. 2. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *Penhallow et al. v. Doane's Adm'rs*, 3 Dall. 54; 1 Cond. Rep. 2. *The United States v. Richard Peters*, 3 Dall. 121; 1 Cond. Rep. 60. *McLellan v. the United States*, 10 Wheat. 423; 8 Cond. Rep. 173.

Vol. I.—10

Four sessions annually in a district; and when held.

Special district courts.
Stated district courts; when held.

Special courts, where held.

Where records kept.

Three circuits, and how divided.
[Obsolete.]

sessions, the first of which to commence as follows, to wit: in the districts of New York and of New Jersey on the first, in the district of Pennsylvania on the second, in the district of Connecticut on the third, and in the district of Delaware on the fourth, Tuesdays of November next; in the districts of Massachusetts, of Maine, and of Maryland, on the first, in the district of Georgia on the second, and in the districts of New Hampshire, of Virginia, and of Kentucky, on the third Tuesdays of December next; and the other three sessions progressively in the respective districts on the like Tuesdays of every third calendar month afterwards, and in the district of South Carolina, on the third Monday in March and September, the first Monday in July, and the second Monday in December of each and every year, commencing in December next; and that the District Judge shall have power to hold special courts at his discretion. That the stated District Court shall be held at the places following, to wit: in the district of Maine, at Portland and Pownalsborough alternately, beginning at the first; in the district of New Hampshire, at Exeter and Portsmouth alternately, beginning at the first; in the district of Massachusetts, at Boston and Salem alternately, beginning at the first; in the district of Connecticut, alternately at Hartford and New Haven, beginning at the first; in the district of New York, at New York; in the district of New Jersey, alternately at New Brunswick and Burlington, beginning at the first; in the district of Pennsylvania, at Philadelphia and York Town alternately, beginning at the first; in the district of Delaware, alternately at Newcastle and Dover, beginning at the first; in the district of Maryland, alternately at Baltimore and Easton, beginning at the first; in the district of Virginia, alternately at Richmond and Williamsburgh, beginning at the first; in the district of Kentucky, at Harrodsburgh; in the district of South Carolina, at Charleston; and in the district of Georgia, alternately at Savannah and Augusta, beginning at the first; and that the special courts shall be held at the same place in each district as the stated courts, or in districts that have two, at either of them, in the discretion of the judge, or at such other place in the district, as the nature of the business and his discretion shall direct. And that in the districts that have but one place for holding the District Court, the records thereof shall be kept at that place; and in districts that have two, at that place in each district which the judge shall appoint.

SEC. 4. And be it further enacted, That the before mentioned districts, except those of Maine and Kentucky, shall be divided into three circuits, and be called the eastern, the middle, and the southern circuit. That the eastern circuit shall consist of the districts of New Hampshire, Massachusetts, Connecticut and New York; that the middle circuit shall consist of the districts of New Jersey, Pennsylvania, Delaware, Maryland and Virginia; and that the southern circuit shall consist of the districts of South Carolina and Georgia, and that there shall be held annually in each district of said circuits, two courts, which shall be called Circuit Courts, and shall consist of any two justices of

1 Gallia, C. C. R. 227. Hudson et al. v. Guestier, 6 Cranch, 281; 2 Cond. Rep. 374. Brown v. The United States, 8 Cranch, 110; 3 Cond. Rep. 56. De Lovio v. Boit et al., 2 Gallia. Rep. 398. Burke v. Trevitt, 1 Mason, 86. The Amiable Nancy, 3 Wheat. 548; 4 Cond. Rep. 322. The Abby, 1 Mason, 360. The Little Ann, Paine's C. C. R. 40. Slocum v. Mayberry et al., 2 Wheat. 1; 4 Cond. Rep. 1. Southwick v. The Postmaster General, 2 Peters, 442. Davis v. A New Ship, Gilpin's D. C. R. 476. Smith v. The Pekin, Gilpin's D. C. R. 203. Peters' Digest, "Courts," "District Courts of the United States."

The 2d section of the act of Congress of 1789, to establish the Judicial Courts of the United States, which provides that no summary writ, return of process, judgment, or other proceedings in the courts of the United States shall be abated, arrested or quashed for any defect or want of form, &c., although it does not include verdicts, ex nomine, but judgments are included, and the language of the provision, "writ, declaration, judgment or other proceeding, in court causes," and further "such writ, declaration, pleading, process, judgment or other proceeding whatsoever," is sufficiently comprehensive to embrace every conceivable step to be taken in a court, from the emanation of the writ, down to the judgment. Roach's, Hulings, 10 Peters, 319.



the Supreme Court, and the district judge of such districts, any two of whom shall constitute a quorum: *Provided*, That no district judge shall give a vote in any case of appeal or error from his own decision; but may assign the reasons of such his decision.

Sec. 5. *And be it further enacted*, That the first session of the said circuit court in the several districts shall commence at the times following, to wit: in New Jersey on the second, in New York on the fourth, in Pennsylvania on the eleventh, in Connecticut on the twenty-second, and in Delaware on the twenty-seventh, days of April next; in Massachusetts on the third, in Maryland on the seventh, in South Carolina on the twelfth, in New Hampshire on the twentieth, in Virginia on the twenty-second; and in Georgia on the twenty-eighth, days of May next, and the subsequent sessions in the respective districts on the like days of every sixth calendar month afterwards, except in South Carolina, where the session of the said court shall commence on the first, and in Georgia where it shall commence on the seventeenth day of October, and except when any of those days shall happen on a Sunday, and then the session shall commence on the next day following. And the sessions of the said circuit court shall be held in the district of New Hampshire, at Portsmouth and Exeter alternately, beginning at the first; in the district of Massachusetts, at Boston; in the district of Connecticut, alternately at Hartford and New Haven, beginning at the last; in the district of New York, alternately at New York and Albany, beginning at the first; in the district of New Jersey, at Trenton; in the district of Pennsylvania, alternately at Philadelphia and Yorktown, beginning at the first; in the district of Delaware, alternately at New Castle and Dover, beginning at the first; in the district of Maryland, alternately at Annapolis and Easton, beginning at the first; in the district of Virginia, alternately at Charlottesville and Williamsburgh, beginning at the first; in the district of South Carolina, alternately at Columbia and Charleston, beginning at the first; and in the district of Georgia, alternately at Savannah and Augusta, beginning at the first. And the circuit courts shall have power to hold special sessions for the trial of criminal causes at any other time at their discretion, or at the discretion of the Supreme Court. (a)

First session
of the circuit
courts; when
holden.
[Obsolete.]

Where holden.

Circuit courts.
Special ses-
sions.

(a) The sessions of the Circuit Courts have been regulated by the following acts: In ALABAMA—act of March 3, 1837. In ARKANSAS—act of March 3, 1837. In CONNECTICUT—act of September 24, 1789; act of April 13, 1792; act of March 3, 1797; act of April 29, 1802; act of May 13, 1826. In DELAWARE—act of September 24, 1789; act of March 3, 1797; act of April 29, 1802; act of March 24, 1804; act of March 3, 1837. In GEORGIA—act of September 24, 1789; act of August 11, 1790; act of April 13, 1792; act of March 3, 1797; act of April 29, 1802; act of May 13, 1826; act of Jan. 21, 1829. In KENTUCKY—act of March 3, 1801; act of March 8, 1802; act of March 2, 1803; act of Feb. 27, 1807; act of March 22, 1808; April 22, 1824. In LOUISIANA—act of March 3, 1837. In MAINE—act of March 3, 1801; act of March 8, 1802; act of March 30, 1820. In MARYLAND—act of Sept. 24, 1789; act of March 3, 1797; act of April 29, 1802; act of Feb. 11, 1830; act of March 3, 1837. In MASSACHUSETTS—act of Sept. 24, 1789; act of March 3, 1791; act of June 9, 1794; act of March 2, 1793; act of March 3, 1797; act of March 3, 1801; act of March 8, 1802; act of April 29, 1802; act of March 26, 1812. In MISSOURI—act of March 3, 1837. In MISSISSIPPI—act of March 3, 1839. In NEW HAMPSHIRE—act of Sept. 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of March 3, 1801; act of April 29, 1802; act of March 6, 1812. In NEW JERSEY—act of September 24, 1789; act of March 3, 1797; act of April 2, 1802. In NEW YORK—act of September 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of April 29, 1802; act of March 3, 1825; act of February 10, 1832; act of May 19, 1836; act of March 3, 1837. In NORTH CAROLINA—act of September 24, 1789; act of April 13, 1792; act of March 2, 1793; act of March 31, 1796; act of March 3, 1797; act of July 5, 1797; act of April 29, 1802; act of March 8, 1806; act of February 4, 1807. In OHIO—act of February 24, 1807; act of March 22, 1803; act of April 22, 1824; act of May 20, 1826. In PENNSYLVANIA—act of September 24, 1789; act of May 12, 1796; act of March 3, 1797; act of December 24, 1799; act of April 29, 1802; act of March 3, 1837. In RHODE ISLAND—act of June 23, 1790; act of March 3, 1791; act of March 2, 1793; act of May 22, 1798; act of March 3, 1797; act of March 3, 1801; act of March 8, 1802; act of April 29, 1802; act of March 26, 1812. In SOUTH CAROLINA—act of September 24, 1789; act of August 11, 1790; act of March 3, 1797; act of April 29, 1802; act of April 14, 1816; act of May 25, 1824; act of March 3, 1825; act of May 4, 1826; act of February 5, 1829. In TENNESSEE—act of February 24, 1807; act of March 22, 1803; act of March 10, 1812; act of January 13, 1831. In VERMONT—act of March 2, 1791; act of March 2, 1793; act of May 27, 1796; act of March 3, 1797; act of April 29, 1802; act of March 22, 1816. In VIRGINIA—act of September 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 3, 1797; act of April 29, 1802; act of March 2, 1837. See the General Index.

Supreme court
adjourned by
one or more
justices; circuit
courts adjourn-
ed.

District courts
adjourned.

The courts
have power to
appoint clerks.

Their oath or
affirmation.

Oath of jus-
tices of supreme
court and judges
of the district
court.

District courts
exclusive juris-
diction.

SEC. 6. *And be it further enacted*, That the Supreme Court may, by any one or more of its justices being present, be adjourned from day to day until a quorum be convened; and that a circuit court may also be adjourned from day to day by any one of its judges, or if none are present, by the marshal of the district until a quorum be convened; (a) and that a district court, in case of the inability of the judge to attend at the commencement of a session, may by virtue of a written order from the said judge, directed to the marshal of the district, be adjourned by the said marshal to such day, antecedent to the next stated session of the said court, as in the said order shall be appointed; and in case of the death of the said judge, and his vacancy not being supplied, all process, pleadings and proceedings of what nature soever, pending before the said court, shall be continued of course until the next stated session after the appointment and acceptance of the office by his successor.

SEC. 7. *And be it [further] enacted*, That the Supreme Court, and the district courts shall have power to appoint clerks for their respective courts, (b) and that the clerk for each district court shall be clerk also of the circuit court in such district, and each of the said clerks shall, before he enters upon the execution of his office, take the following oath or affirmation, to wit: "I, A. B., being appointed clerk of do solemnly swear, or affirm, that I will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God." Which words, so help me God, shall be omitted in all cases where an affirmation is admitted instead of an oath. And the said clerks shall also severally give bond, with sufficient sureties, (to be approved of by the Supreme and district courts respectively) to the United States, in the sum of two thousand dollars, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and determinations of the court of which he is clerk.

SEC. 8. *And be it further enacted*, That the justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: "I, A. B., do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God."

SEC. 9. *And be it further enacted*, That the district courts (c) shall have, exclusively of the courts of the several States, cognizance of all crimes and offences that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the

By the act of March 10, 1838, the Justice of the Supreme Court is required to attend but one circuit in the districts of Indiana, Illinois, and Michigan.

By an act passed in 1844, the Justices of the Supreme Court are empowered to hold but one session of the Circuit Court in each district in their several circuits. The Judges of the District Courts hold the other sessions of the Circuit Court in their several districts.

(a) The provisions of law on the subject of the adjournments of the Supreme Court in addition to the 6th section of this act, are, that in case of epidemical disease, the court may be adjourned to some other place than the seat of government. Act of February 25, 1799.

(b) By the 2d section of the act entitled "an act in amendment of the acts respecting the judicial system of the United States," passed February 28, 1839, chap. 36, it is provided "that all the circuit courts of the United States shall have the appointment of their own clerks, and in case of disagreement between the judges, the appointment shall be made by the presiding judge of the court." See ex parte Duncan N. Hennen, 13 Peters, 230.

(c) The further legislation on the subject of the jurisdiction and powers of the District Courts are: the act of June 5, 1794, ch. 50, sec. 6; act of May 10, 1800, chap. 51, sec. 5; act of February 24, 1807, chap. 13; act of February 24, 1807, chap. 18; act of March 3, 1815; act of April 16, 1816, chap. 56, sec. 6; act of April 20, 1818, chap. 38; act of May 15, 1820, chap. 105, sec. 4; act of March 3, 1823, chap. 72.



high seas; where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted; and shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas; (a) saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it; and shall also have exclusive original cognizance of all seizures on land, or other waters than as aforesaid, made, and of all suits for penalties and forfeitures incurred, under the laws of the United States. (b) And shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States. (c) And shall also have cognizance, concurrent as last mentioned, of all suits at common law where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And shall also have jurisdiction exclusively of the courts of the several States, of all suits against consuls or vice-consuls, except for offences above the description aforesaid. (d) And the trial of issues in fact, in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury.

[Acts of June 5, 1794, sect. 6; act of Feb. 13, 1807; act of March 3, 1815, sect. 4.]
Original cognizance in maritime causes and of seizure under the laws of the United States.

Concurrent jurisdiction.

Trial of fact by jury.

Sec. 10. And be it further enacted, That the district court in Kentucky district shall, besides the jurisdiction aforesaid, have jurisdiction of all other causes, except of appeals and writs of error, hereinafter made cognizable in a circuit court, and shall proceed therein in the same

Kentucky district court.
[Obsolete.]
1807, ch. 16.

(a) Jurisdiction of the District Courts in cases of admiralty seizures, under laws of impost, navigation and trade. *M'Donough v. Danery*, 3 Dall. 183; 1 Cond. Rep. 94. *The United States v. La Vengeance*, 3 Dall. 297; 1 Cond. Rep. 132. *Glass et al. v. The Betsey*, 3 Dall. 6; 1 Cond. Rep. 10. *The Alerta*, 9 Cranch, 359; 3 Cond. Rep. 425. *The Merino et al.*, 9 Wheat. 391; 6 Cond. Rep. 623. *The Josefa Segunda*, 10 Wheat. 312; 6 Cond. Rep. 111. *Jennings v. Carson*, 4 Cranch, 2; 2 Cond. Rep. 2. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *Penhallow et al. v. Doane's Adm'r*, 3 Dall. 54; 1 Cond. Rep. 21. *United States v. Richard Peters*, 3 Dall. 121; 1 Cond. Rep. 60. *Hudson et al. v. Guestier*, 6 Cranch, 231; 2 Cond. Rep. 374. *Brown v. The United States*, 3 Cranch, 110; 3 Cond. Rep. 56. *The Sarah*, 3 Wheat. 391; 5 Cond. Rep. 472. *The Amiable/Nancy*, 3 Wheat. 646; 4 Cond. Rep. 322. *Slocum v. Mayberry*, 2 Wheat. 1; 4 Cond. Rep. 1. *Gelston et al. v. Hoyt*, 3 Wheat. 246; 4 Cond. Rep. 244. *The Bolina*, 1 Gallis. C. C. R. 75. *The Robert Fulton*, 1 Paine's C. C. R. 620; Bee's D. C. R. 11. *De Lovio v. Boit et al.*, 2 Gallis. C. C. R. 398. *The Abby*, 1 Mason's Rep. 380. *The Little Ann*, Paine's C. C. R. 40. *Davis v. A New Brig*, Gilpin's D. C. R. 473. *The Catharine*, 1 Adm. Decis. 104.

(b) An information against a vessel under the act of Congress of May 22, 1794, on account of an alleged exportation of arms, is a case of admiralty and maritime jurisdiction; and on appeal from the District to the Circuit Court, in such a case is sustainable. It is also a civil cause, and triable without the intervention of a jury, under the 9th section of the judicial act. *The United States v. La Vengeance*, 3 Dall. 297; 1 Cond. Rep. 132. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *The Abby*, 1 Mason, 380. *The Little Ann*, Paine's C. C. R. 40.

When the District and State courts have concurrent jurisdiction, the right to maintain the jurisdiction attaches to that tribunal which first exercises it, and obtains possession of the thing. *The Robert Fulton*, Paine's C. C. R. 620.

(c) *Burke v. Trevitt*, 1 Mason, 26. The courts of the United States have exclusive jurisdiction of all seizures made on land or water, for a breach of the laws of the United States, and any intervention of State authority, which by taking the thing seized out of the hands of the officer of the United States, might obstruct the exercise of this jurisdiction, is unlawful. *Slocum v. Mayberry et al.*, 2 Wheat. 1; 4 Cond. Rep. 1.

(d) *Davis v. Packard*, 6 Peters, 41. As an abstract question, it is difficult to understand on what ground a State court can claim jurisdiction of civil suits against foreign consuls. By the Constitution, the judicial power of the United States extends to all cases affecting ambassadors, other public ministers and consuls; and the judiciary act of 1789 gives to the district courts of the United States, exclusively of the courts of the several States, jurisdiction of all suits against consuls and vice consuls, except for certain offences enumerated in this act. *Davis v. Packard*, 7 Peters, 276.

If a consul, being sued in a State court, omits to plead his privilege of exemption from the suit, and afterwards, on removing the judgment of the inferior court to a higher court by writ of error, claims the privilege, such an omission is not a waiver of the privilege. If this was to be viewed merely as a personal privilege, there might be grounds for such a conclusion. But it cannot be so considered; it is the privilege of the country or government which the consul represents. This is the light in which foreign ministers are considered by the law of nations; and our constitution and law seem to put consuls on the same footing in this respect. *Ibid.*

u2

Maine district
court.
[Obsolete.]

Circuit courts
original cogni-
zance where the
matter in dis-
pute exceeds
five hundred
dollars.

manner as a circuit court, and writs of error and appeals shall lie from decisions therein to the Supreme Court in the same causes, as from a circuit court to the Supreme Court, and under the same regulations. (a) And the district court in Maine district shall, besides the jurisdiction herein before granted, have jurisdiction of all causes, except of appeals and writs of error herein after made cognizable in a circuit court, and shall proceed therein in the same manner as a circuit court: And writs of error shall lie from decisions therein to the circuit court in the district of Massachusetts in the same manner as from other district courts to their respective circuit courts.

Sec. 11. And be it further enacted, That the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State. (b) And shall have

(a) By an act passed February 24, 1807, the Circuit Court jurisdiction of the District Court of Kentucky was abolished.

(b) The amount laid in the declaration is the sum in controversy. If the plaintiff receive less than the amount so claimed, the jurisdiction of the court is not affected. *Green v. Lister*, 8 Cranch, 229. *Gordon v. Longest*, 16 Peters, 87. *Lessee of Hartshorn v. Wright, Peters' C. C. R.* 64.

By the 5th section of the act of February 21, 1794, "an act to promote the progress of the useful arts," &c., jurisdiction in actions for violations of patent rights, is given to the Circuit Courts. Also by the act of February 15, 1819, original cognizance, as well in equity as at law, is given to the Circuit Courts of all actions, and for the violation of copy rights. In such cases appeals lie to the Supreme Court of the United States. So also in cases of interest, or disability of a district judge. Act of May 8, 1792, sec. 11; act of March 2, 1809, sec. 1; act of March 3, 1821.

Jurisdiction in cases of injunctions on Treasury warrants of distress. Act of May 15, 1820, sec. 4. Jurisdiction in cases removed from State courts. Act of February 4, 1815, sec. 8; act of March 3, 1815, sec. 6.

Jurisdiction in cases of assigned debentures. Act of March 2, 1799.

Jurisdiction of crimes committed within the Indian territories. Act of March 30, 1830, sec. 15; act of April 30, 1816, sec. 4; act of March 3, 1817, sec. 2.

Jurisdiction in bankruptcy. Act of August 19, 1841, chap. 9, [repealed.]

Jurisdiction in cases where citizens of the same State claim title to land under a grant from a State other than that in which the suit is pending in a State court. Act of September 24, 1789, sec. 12. See *Coleson v. Lewis*, 2 Wheat. 377; 4 Cond. Rep. 168.

Jurisdiction where officers of customs are parties. Act of February 4, 1815, sec. 6; act of March 3, 1815, sec. 6; act of March 3, 1847, sec. 2.

A circuit court though an inferior court in the language of the constitution, is not so in the language of the common law; nor are its proceedings subject to the scrutiny of those narrow rules, which the caution or jealousy of the courts at Westminster long applied to courts of that denomination; but are entitled to as liberal intendments and presumptions in favour of their regularity, as those of any supreme court. *Turner v. The Bank of North America*, 4 Dall. 8; 1 Cond. Rep. 205.

The Circuit Courts of the United States have cognizance of all offences against the United States. What those offences are depends upon the common law applied to the sovereignty and authorities conferred to the United States. *The United States v. Coolidge*, 1 Gallis. C. C. R. 488, 495.

Where the jurisdiction of the federal courts has once attached, no subsequent change in the relation or condition of the parties in the progress of the cause, will oust that jurisdiction. *The United States v. Meyers*, 2 Brocken. C. C. R. 518.

All the cases arising under the laws of the United States are not, per se, among the cases comprised within the jurisdiction of the Circuit Court, under the provisions of the 11th section of the judiciary act of 1789. *The Postmaster General v. Stockton and Stokes*, 18 Peters, 524.

Jurisdiction of the Circuit Courts of the United States in suits between aliens and citizens of another State than that in which the suit is brought:

The courts of the United States will entertain jurisdiction of a cause where all the parties are aliens, if none of them object to it. *Mason et al. v. The Blaireau*, 2 Cranch, 240; 1 Cond. Rep. 397.

The Supreme Court understands the expressions in the act of Congress, giving jurisdiction to the courts of the United States "where an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State," to mean that each distinct interest should be represented by persons, all of whom have a right to sue, or may be sued in the federal courts: that is, when the interest is joint, each of the persons concerned in that interest must be competent to sue or be liable to be sued in those courts. *Strawbridge v. Curtis*, 3 Cranch, 267; 1 Cond. Rep. 523.

Neither the Constitution nor the act of Congress regards the subject of the suit, but the parties to it. *Mossman's Exors v. Higginson*, 4 Dall. 12; 1 Cond. Rep. 210.

When the jurisdiction of the Circuit Court depends on the character of the parties, and each party consists of a number of individuals, each one must be competent to sue in the courts of the United States, or jurisdiction cannot be entertained. *Ward v. Arredondo et al.*, Paine's C. C. R. 410. *Strawbridge v. Curtis*, 3 Cranch, 267; 1 Cond. Rep. 523.

The courts of the United States have not jurisdiction, unless it appears by the record that it belongs



exclusive cognizance of all crimes and offences cognizable under the authority of the United States, (a) except where this act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable therein. But no person shall be arrested in one district for trial in another, in any civil action before a circuit or district court. (b) And no civil suit shall be brought before either of said courts against an inhabitant of the United States, by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ, nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favour of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange. (c) And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions herein after provided. (d)

Sec. 12. And be it further enacted, That if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court; and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial into the next circuit court, to be held in the district where the suit is pending, or if in the district of Maine to the district court next to be holden therein, or if in Kentucky district to the district court next to be holden therein, and offer good and sufficient surety for his entering in such court, on the first day of its session, copies of said process against him, and also for his there appearing and entering special bail in the cause, if special bail was originally requisite therein, it shall then be the duty of the state court to accept the surety, and proceed no further in the cause, and any bail that may have been originally taken shall be discharged, and the said copies being entered as aforesaid, in such court of the United States, the cause shall there proceed in the same manner as if it had been brought there by original process. (c) And any attach-

Exclusive cognizance of crimes and offences cognizable under the laws of the United States.

No person to be arrested in one district for trial in another on any civil suit.

Limitation as to civil suits. Actions on promissory notes.

Circuit courts shall also have appellate jurisdiction.

Matter in dispute above 500 dollars.

Removal of causes from state courts.

Special bail.

to them, as that the parties are citizens of different States. *Wood v. Wagoner*, 2 Cranch, 9; 1 Cond. Rep. 335.

Where the parties to a suit are such as to give the federal courts jurisdiction, it is immaterial that they are administrators or executors, and that these they represent were citizens of the same State. *Chapdelaine et al. v. Duchesneau*, 4 Cranch, 306; 2 Cond. Rep. 116. *Childress et al. v. Emory et al.*, 9 Wheat. 642; 6 Cond. Rep. 547. See also *Brown v. Strode*, 5 Cranch, 303; 2 Cond. Rep. 285. *Bingham v. Cabot*, 3 Dall. 382; 1 Cond. Rep. 170. *Gracie v. Palmer*, 8 Wheat. 699; 5 Cond. Rep. 561. *Massie v. Watts*, 6 Cranch, 148; 2 Cond. Rep. 332. *Sere et al. v. Pitot et al.*, 6 Cranch, 332; 2 Cond. Rep. 389. *Shute v. Davis Peters*, C. C. R. 431. *Flanders v. The Aina Ins. Com.*, 3 Mason, C. C. R. 158. *Kitchen v. Sullivan et al.*, 4 Wash. C. C. R. 84. *Briggs v. French*, 2 Sumner's C. C. R. 252.

(a) The Circuit Courts of the United States have jurisdiction of a robbery committed on the high seas under the 8th section of the act of April 30, 1790, although such robbery could not, if committed on land, be punished with death. *The United States v. Palmer et al.*, 3 Wheat. 610; 4 Cond. Rep. 352. See *The United States v. Coolidge et al.*, 1 Gallis. C. C. R. 488, 495. *The United States v. Coombs*, 12 Peters, 72.

The Circuit Courts have no original jurisdiction in suits for penalties and forfeitures arising under the laws of the United States, but the District Courts have exclusive jurisdiction. *Ketland v. The Cassius*, 2 Dall. 366.

(b) The petitioner was arrested in Pennsylvania, by the marshal of the district of Pennsylvania, under an attachment from the Circuit Court of Rhode Island, for a contempt in not appearing in that court after a monition, served upon him in the State of Pennsylvania, to answer in a prize cause as to a certain bale of goods condemned to the capture, which had come into the possession of Peter Graham, the petitioner. Held, that the circuit and district courts of the United States cannot, either in suits at law or equity, send their process into another district, except where specially authorized so to do by some act of Congress. *Ex parte Peter Graham*, 3 Wash. C. C. R. 456.

(c) *Bean v. Smith*, 2 Mason's C. C. R. 352. *Young v. Bryan*, 6 Wheat. 146; 5 Cond. Rep. 44. *Molan v. Torrance*, 9 Wheat. 687; 6 Cond. Rep. 668.

(d) *Smith v. Jackson*, Paine's C. C. R. 453.

(e) The Judge of a State Court to which an application is made for the removal of a cause into a court of the United States must exercise a legal discretion as to the right claimed to remove the cause;

Attachment of
goods holden to
final judgment.

Title of land
where value ex-
ceeds 500 dol-
lars.

If in Maine
and Kentucky,
where causes
are removable.
[Obsolete.]

Issues in fact
by jury.

Supreme
court exclusive
jurisdiction.

Proceedings
against public
ministers.

ment of the goods or estate of the defendant by the original process, shall hold the goods or estate so attached, to answer the final judgment in the same manner as by the laws of such state they would have been holden to answer final judgment, had it been rendered by the court in which the suit commenced. And if in any action commenced in a state court, the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, shall state to the court and make affidavit if they require it, that he claims and shall rely upon a right or title to the land, under a grant from a state other than that in which the suit is pending, and produce the original grant or an exemplification of it, except where the loss of public records shall put it out of his power; and shall move that the adverse party inform the court, whether he claims a right or title to the land under a grant from the state in which the suit is pending; the said adverse [party] shall give such information, or otherwise not be allowed to plead such grant, or give it in evidence upon the trial, and if he informs that he does claim under such grant, the party claiming under the grant first mentioned may then, on motion, remove the cause for trial to the next circuit court to be holden in such district, or if in the district of Maine, to the court next to be holden therein; or if in Kentucky district, to the district court next to be holden therein; but if he is the defendant, shall do it under the same regulations as in the before-mentioned case of the removal of a cause into such court by an alien; and neither party removing the cause, shall be allowed to plead or give evidence of any other title than that by him stated as aforesaid, as the ground of his claim; and the trial of issues in fact in the circuit courts shall, in all suits, except those of equity, and of admiralty, and maritime jurisdiction, be by jury. (a.)

Sec. 13. And be it further enacted, That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. (b.) And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul,

the defendant being entitled to the right to remove the cause under the law of the United States, on the facts of the case, (the judge of the State court could not legally prevent the removal;) the application for the removal having been made in proper form, it was the duty of the State court to proceed no further in the cause. *Gordon v. Longest*, 16 Peters, 87.

One great object in the establishment of the courts of the United States, and regulating their jurisdiction, was to have a tribunal in each State presumed to be free from local influence, and to which all who were non-residents or aliens, might resort for legal redress; and this object would be defeated if a judge in the exercise of any other than a legal discretion, may deny to the party entitled to it, a removal of his cause. *Ibid*.

(a) The provisions of the laws of the United States relating to juries, and trials by jury are.—*Trial by jury*—act of September 24, 1789, chap. 20, sec. 10, sec. 12, sec. 15.—*Exemption from attending on juries*—act of May 7, 1800, chap. 46, sec. 4. *Choice of jurors and qualification of juries*—act of September 24, 1789, chap. 20, sec. 29; act of May 13, 1800; act of July 20, 1840; act of March 3, 1841, chap. 19. Expired as to juries in Pennsylvania. Special jury act of April 29, 1802, chap. 31, sec. 30. *Jury in criminal cases*—act of September 24, 1789, chap. 20, sec. 29; act of April 30, 1790, chap. 9. *Manner of summoning jurors*—act of September 24, 1789, sec. 29; act of April 29, 1802, chap. 31. *Juryman de talibus*—act of September 24, 1789, chap. 20.

(b) As to cases in which States, or alleged States, are parties, the following cases are referred to: *The Cherokee Nation v. The State of Georgia*, 5 Peters, 1. *New Jersey v. The State of New York*, 5 Peters, 284. *Ex parte Juan Madrazo*, 7 Peters, 627. *The State of Rhode Island v. The State of Massachusetts*, 12 Peters, 657. *Cohens v. The State of Virginia*, 6 Wheat, 264; 5 Cond. Rep. 80. *New York v. Connecticut*, 4 Dall. 3. *Fowler v. Lindsey et al.*, 3 Dall. 411.



or vice consul, shall be a party. (a) And the trial of issues in fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for; (b) and shall have power to issue writs of prohibition (c) to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of *mandamus*, (d) in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

Sup. Court
appellate juris-
diction.
Writs of Pro-
hibition.
Of Mandamus.

Sec. 14. And be it further enacted, That all the before-mentioned courts of the United States, shall have power to issue writs of *scire facias*, *habeas corpus*, (e) and all other writs not specially provided for

Courts may
issue writs *scire*
facias, *habeas*
corpus, &c.

(a) The United States v. Ortega, 11 Wheat. 467; 6 Cond. Rep. 394. Davis v. Packard, 6 Peters, 41.
(b) As to the appellate jurisdiction of the Supreme Court, see the cases collected in Peters's Digest, "Supreme Court," "Appellate Jurisdiction of the Supreme Court," and the following cases: The United States v. Goodwin, 7 Cranch, 103; 2 Cond. Rep. 434. Wiscart v. Dauchy, 3 Dall. 321; 1 Cond. Rep. 144. United States v. Moore, 3 Cranch, 159; 1 Cond. Rep. 480. Owings v. Norwood's Lessee, 5 Cranch, 244; 2 Cond. Rep. 275. Martin v. Hunter's Lessee, 1 Wheat. 304; 3 Cond. Rep. 575. Gordon v. Caldebaugh, 3 Cranch, 269; 1 Cond. Rep. 624. Ex parte Kearney, 7 Wheat. 38; 5 Cond. Rep. 225. Smith v. The State of Maryland, 6 Cranch, 286; 2 Cond. Rep. 377. Inglee v. Coolidge, 2 Wheat. 363; 4 Cond. Rep. 155. Nicholls et al. v. Hodges Ex'ors, 1 Peters, 662. Bucl et al. v. Van Ness, 8 Wheat. 312; 5 Cond. Rep. 445. Miller v. Nicholls, 4 Wheat. 311; 4 Cond. Rep. 466. Matthews v. Zane et al., 7 Wheat. 164; 6 Cond. Rep. 265. McCluny v. Silliman, 6 Wheat. 598; 5 Cond. Rep. 197. Houslon v. Moore, 3 Wheat. 453; 3 Cond. Rep. 286. Montgomery v. Hernandez et al., 12 Wheat. 129; 8 Cond. Rep. 475. Cohens v. Virginia, 6 Wheat. 264; 5 Cond. Rep. 90. Gibbons v. Ogden, 6 Wheat. 448; 5 Cond. Rep. 134. Weston et al. v. The City Council of Charleston, 2 Peters, 449. Hickie v. Starke et al., 1 Peters, 94. Satterlee v. Mathewson, 2 Peters, 380. McBride v. Hooy, 11 Peters, 167. Ross v. Barland et al., 1 Peters, 635. The City of New Orleans v. De Armas, 9 Peters, 324. Crowell v. Randell, 10 Peters, 368. Williams v. Norris, 12 Wheat. 117; 6 Cond. Rep. 462. Menard v. Aspasia, 5 Peters, 505. Worcester v. The State of Georgia, 6 Peters, 515. The United States v. Moore, 3 Cranch, 159; 1 Cond. Rep. 430.

(c) Prohibition. Where the District Court of the United States has no jurisdiction of a cause brought before it, a prohibition will be issued from the Supreme Court to prevent proceedings. The United States v. Judge Peters, 3 Dall. 121; 1 Cond. Rep. 60.

(d) Mandamus. The following cases have been decided on the power of the Supreme Court to issue a mandamus. Marbury v. Madison, 1 Cranch, 137; 1 Cond. Rep. 267. McCluny v. Silliman, 2 Wheat. 339; 4 Cond. Rep. 162. United States v. Lawrence, 3 Dall. 42; 1 Cond. Rep. 19. United States v. Peters, 3 Dall. 121; 1 Cond. Rep. 60. Ex parte Burr, 9 Wheat. 529; 5 Cond. Rep. 660. Parker v. The Judges of the Circuit Court of Maryland, 12 Wheat. 561; 6 Cond. Rep. 844. Ex parte Roberts et al., 6 Peters, 216. Ex parte Davenport, 6 Peters, 661. Ex parte Bradstreet, 12 Peters, 174; 7 Peters, 634; 8 Peters, 583. Life and Fire Ins. Comp. of New York v. Wilson's heirs, 8 Peters, 291.

On a mandamus a superior court will never direct in what manner the discretion of the inferior tribunal shall be exercised; but they will, in a proper case, require an inferior court to decide. *Ibid.* Life and Fire Ins. Comp. of New York v. Adams, 8 Peters, 671. Ex parte Story, 12 Peters, 339. Ex parte Jesse Hoyt, collector, &c., 13 Peters, 278.

A writ of mandamus is not a proper process to correct an erroneous judgment or decree rendered in an inferior court. This is a matter which is properly examinable on a writ of error, or an appeal to a proper appellate tribunal. *Ibid.*

Writs of mandamus from the Circuit Courts of the United States. A Circuit Court of the United States has power to issue a mandamus to a collector, commanding him to grant a clearance. Gilchrist et al. v. Collector of Charleston, 1 Hall's Admiralty Law Journal, 429.

The power of the Circuit Court to issue the writ of mandamus is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. McIntire v. Wood, 7 Cranch, 504; 2 Cond. Rep. 588.

The Circuit Courts of the United States have no power to issue writs of mandamus after the practice of the King's Bench; but only where they are necessary for the exercise of their jurisdiction. Smith v. Jackson, Paine's C. C. R. 453.

(e) Habeas corpus. Ex parte Burford, 3 Cranch, 448; 1 Cond. Rep. 594; Ex parte Bollman, 4 Cranch, 75; 2 Cond. Rep. 33.

The writ of habeas corpus does not lie to bring up a person confined in the prison bounds upon a *captus ad satisfaciendum*, issued in a civil suit. Ex parte Wilson, 6 Cranch, 52; 2 Cond. Rep. 300. Ex parte Kearney, 7 Wheat. 33; 5 Cond. Rep. 225.

The power of the Supreme Court to award writs of habeas corpus is conferred expressly on the court by the 14th section of the judicial act, and has been repeatedly exercised. No doubt exists respecting the power. No law of the United States prescribes the cases in which this great writ shall be issued, nor the power of the court over the party brought up by it. The term used in the constitution is one which is well understood, and the judicial act authorizes the court, and all other courts of the United States and the judges thereof to issue the writ "for the purpose of inquiring into the cause of commitment." Ex parte Tobias Watkins, 8 Peters, 201.

As the jurisdiction of the Supreme Court is appellate, it must be shown to the court that the court has power to award a habeas corpus, before one will be granted. Ex parte Milburn, 9 Peters, 704.

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Act of 1793,
ch. 22; act of
1807, ch. 13;
act of 1818, ch.
83; act of Feb.
1819; act of
May 20, 1826,
ch. 124.
Limitation of
writs of habeas
corpus.

Parties shall
produce books
and writings.

Suits in equi-
ty limited.

by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—*Provided*, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same; or are necessary to be brought into court to testify.

Sec. 15. *And be it further enacted*, That all the said courts of the United States, shall have power in the trial of actions at law, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively, on motion, to give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively on motion as aforesaid, to give judgment against him or her by default. (a)

Sec. 16. *And be it further enacted*, That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law. (b)

The act of Congress authorizing the writ of habeas corpus to be issued "for the purpose of inquiring into the cause of commitment," applies as well to cases of commitment under civil as those of criminal process. See Chief Justice Marshall, 2 Brocken. C. C. R. 447. *Ex parte Cabrera*, 1 Wash. C. C. R. 232. *United States v. French*, 1 Gallis. C. C. R. 2. *Holmes v. Jennison*, Governor of the State of Vermont, 14 Peters, 540.

(a) It is sufficient for one party to suggest that the other is in possession of a paper, which he has, under the act of Congress, given him notice to produce at the trial, without offering other proof of the fact; and the party so called upon must discharge himself of the consequences of not producing it, by affidavit or other proof that he has it not in his power to produce it. *Hylton v. Brown*, 1 Wash. C. C. R. 298.

The court will not, upon a notice of the defendant to the plaintiff to produce a title paper to the land in dispute, which is merely to defeat the plaintiff's title, compel him to do so; unless the defendant first shows title to the land. Merely showing a right of possession is not sufficient to entitle him to the aid of a court of chancery, or of the Supreme Court, to compel a discovery of papers which are merely to defeat the plaintiff's title without strengthening the defendant's. It is sufficient, in order to entitle him to call for papers to show the title to the land, although none is shown in the papers. *Ibid*.

Where one party in a cause wishes the production of papers supposed to be in the possession of the other, he must give notice to produce them: if not produced, he may give inferior evidence of their contents. But if it is his intention to nonsuit the plaintiff, or if the plaintiff requiring the papers means to obtain a judgment by default, under the 15th section of the judicial act, he is bound to give the opposite party notice that he means to move the court for an order upon him to produce the papers, or on a failure so to do, to award a nonsuit or judgment, as the case may be. *Bas v. Steele*, 3 Wash. C. C. R. 381.

No advantage can be taken of the non-production of papers, unless ground is laid for presuming that the papers were, at the time notice was given, in the possession or power of the party to whom notice was given, and that they were pertinent to the issue. In either of the cases, the party to whom notice was given may be required to prove, by his own oath, that the papers are not in his possession or power; which oath may be met by contrary proof according to the rules of equity. *Ibid*.

To entitle the defendant to nonsuit the plaintiff for not obtaining papers which he was noticed to produce, the defendant must first obtain an order of the court, under a rule that they should be produced. But this order need not be absolute when moved for, but may be nisi, unless cause be shown at the trial. *Dunham v. Riley*, 4 Wash. C. C. R. 126.

Notice to the opposite party to produce on the trial all letters in his possession, relating to monies received by him under the award of the commissioners under the Florida treaty, is sufficiently specific as they described their subject matter. If to such notice the party answer on oath that he has not a particular letter in his possession, and after diligent search could find none such, it is sufficient to prevent the offering of secondary proof of its contents. The party cannot be asked, or compelled to answer whether he ever had such a letter in his possession. *Vasse v. Mifflin*, 4 Wash. C. C. R. 519.

(b) The equity jurisdiction of the courts of the United States is independent of the local law of any State, and is the same in nature and extent as the equity jurisdiction of England from which it is derived. Therefore it is no objection to this jurisdiction, that there is a remedy under the local law. *Gordon v. Hobart*, 2 Sumner's C. C. R. 401.

If a case is cognizable at common law, the defendant has a right of trial by jury, and a suit upon it cannot be sustained in equity. *Baker v. Biddle*, 1 Baldwin's C. C. R. 405.



SEC. 17. *And be it further enacted*, That all the said courts of the United States shall have power to grant new trials, in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law; (a) and shall have power to impose and administer all necessary oaths or affirmations, and to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or bearing before the same; (b) and to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States.

Courts may grant new trials.

Act of March 2, 1831, ch. 89.

SEC. 18. *And be it further enacted*, That when in a circuit court, judgment upon a verdict in a civil action shall be entered, execution may on motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as they may judge proper, be stayed forty-two days from the time of entering judgment, to give time to file in the clerk's office of said court, a petition for a new trial. And if such petition be there filed within said term of forty-two days, with a certificate thereon from either of the judges of such court, that he allows the same to be filed, which certificate he may make or refuse at his discretion, execution shall of course be further stayed to the next session of said court. (c) And if a new trial be granted, the former judgment shall be thereby rendered void.

Execution may be stayed on conditions.

SEC. 19. *And be it further enacted*, That it shall be the duty of circuit courts, in causes in equity and of admiralty and maritime jurisdiction, to cause the facts on which they found their sentence or decree, fully to appear upon the record either from the pleadings and decrees itself, or a state of the case agreed by the parties, or their counsel, or if they disagree by a stating of the case by the court.

Facts to appear on record.

Altered by act of March 3, 1803, chap. 40.

SEC. 20. *And be it further enacted*, That where in a circuit court, a plaintiff in an action, originally brought there, or a petitioner in equity, other than the United States, recovers less than the sum or value of five hundred dollars, or a libellant, upon his own appeal, less than the sum or value of three hundred dollars, he shall not be allowed, but at the discretion of the court, may be adjudged to pay costs.

Costs not allowed unless 500 dollars recovered.

SEC. 21. *And be it further enacted*, That from final decrees in a district court in causes of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of three hundred dollars, exclusive of costs, an appeal shall be allowed to the next circuit court,

Appeals from the district to the circuit court where matter in dispute exceeds 300 dollars.

There cannot be concurrent jurisdiction at law and equity, where the right and remedy are the same; but equity may proceed in aid of the remedy at law, by incidental and auxiliary relief; if the remedy at law is complete. Its jurisdiction is special, limited and defined; not as in England, where it depends on usage. *Ibid.*

The 16th section of the judiciary law is a declaratory act settling the law as to cases of equity jurisdiction, in the nature of a proviso, limitation or exception to its exercise. If the plaintiff have a plain, adequate and complete remedy at law, the case is not a suit in equity, under the constitution, or the judiciary act. *Ibid.*

Though the rules and principles established in English Chancery at the revolution, are adopted in the federal courts, the changes introduced there since, are not followed here; especially in matters of jurisdiction, as to which the 16th section of the act of 1789 is imperative. *Ibid.*

(a) New trials. *Calder v. Bull and Wife*, 3 Dall. 386; 1 Cond. Rep. 172. *Arnold v. Jones*, Bee's Rep. 104.

(b) Contempt of court. The courts of the United States have no common law jurisdiction of crimes against the United States. But independent of statutes, the courts of the United States have power to fine for contempts, and imprison for contumacy, and to enforce obedience to their orders, &c. *The United States v. Hudson et al.*, 7 Cranch, 32; 2 Cond. Rep. 405.

By an act passed March 2, 1831, chap. 89, it is enacted, that the power of the courts of the United States to punish for contempts shall not extend to any cases, except to misbehaviour in the presence of the court, or so near to the court as to obstruct the administration of justice, or the misbehaviour of the officers of the court in their official transactions, and disobedience or resistance by any officer of the court, party, juror, witness or any person to any writ, process, order or decree of the court. Indictments may be presented against persons impeding the proceedings of the court, &c. See the statute.

(c) Execution. The 14th section of the Judiciary act of September 24, 1789, chap. 20, authorizes the courts of the United States to issue writs of execution upon judgments which have been rendered. This section provides only for the issuing of the writ, and directs no mode of proceeding by the officer obeying its command. *Bank of the United States v. Halstead*, 10 Wheat. 51; 6 Cond. Rep. 22.

Altered by the
2d section of the
act of March 3,
1803, chap. 40.
[Obsolete.]

Final decrees
re-examined
above 50 dol-
lars.

Altered by the
2d section of the
act of March 3,
1803, chap. 40.

And suits in
equity, exceed-
ing 2000 dollars
in value.

to be held in such district. *Provided nevertheless*, That all such appeals from final decrees as aforesaid, from the district court of Maine, shall be made to the circuit court, next to be holden after each appeal in the district of Massachusetts.

SEC. 22. *And be it further enacted*, That final decrees and judgments in civil actions in a district court, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, may be re-examined, and reversed or affirmed in a circuit court, holden in the same district, upon a writ of error, whereto shall be annexed and returned therewith at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and prayer for reversal, with a citation to the adverse party, signed by the judge of such district court, or a justice of the Supreme Court, the adverse party having at least twenty days' notice. (a) And upon a like process, may final judgments and decrees in civil actions, and suits in equity in a circuit court, brought there by original process, or removed there from courts of the several States, or removed there by appeal from a district court where the matter in dispute exceeds the sum or value of two thousand dollars, exclusive of costs, be re-examined and reversed or affirmed in the Supreme Court, the citation being in such case signed by a judge of such circuit court, or justice of the Supreme Court, and the adverse party having at least thirty days' notice. (b) But there shall be no rever-

(a) The rules, regulations and restrictions contained in the 21st and 22d sections of the judiciary act of 1789, respecting the time within which a writ of error shall be brought, and in what instances it shall operate as a supersedeas, the citation to the opposite party, the security to be given by the plaintiff in error, and the restrictions on the appellate court as to reversals in certain enumerated cases, are applicable to the act of 1803, and are to be substantially observed; except that where the appeal is prayed for at the same time when the decree or sentence is pronounced, a citation is not necessary. *The San Pedro*, 2 Wheat. 132; 4 Cond. Rep. 65.

By the 2d section of the act of March 3, 1803, chap. 40, appeals are allowed from all final judgments or decrees in any of the District courts, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars. Appeals from the Circuit Court to the Supreme Court are allowed when the sum or value, exclusive of costs, exceeds \$2000. This section repeals so much of the 19th and 20th sections of the act of 1789, as comes within the purview of those provisions.

By the provisions of the act of April 2, 1816, chap. 39, appeals from the Circuit Court of the United States for the District of Columbia, are allowed when the matter in dispute in the cause exceeds \$1000, exclusive of costs.

(b) The following cases have been decided on the questions which have arisen as to the value in controversy, in a case removed by writ of error or appeal.

The verdict and judgment do not ascertain the matter in dispute between the parties. To determine this, recurrence must be had to the original controversy; to the matter in dispute when the action was instituted. *Wilson v. Daniel*, 3 Dall. 401; 1 Cond. Rep. 125.

Where the value of the matter in dispute did not appear in the record, in a case brought by writ of error, the court allowed affidavits to be taken to prove the same, on notice to the opposite party. The writ of error not to be a supersedeas. *Course v. Stead's Exors*, 4 Dall. 22; 1 Cond. Rep. 217; 4 Dall. 20; 1 Cond. Rep. 215.

The Supreme Court will permit viva voce testimony to be given of the value of the matter in dispute, in a case brought up by a writ of error or by appeal. *The United States v. The Brig Union et al.*, 4 Cranch, 216; 2 Cond. Rep. 91.

The plaintiff below claimed more than \$2000 in his declaration, but obtained a verdict for a less sum. The appellate jurisdiction of the Supreme Court depends on the sum or value in dispute between the parties, as the case stands on the writ of error in the Supreme Court; not on that which was in dispute in the Circuit Court. If the writ of error be brought by the plaintiff below, then the sum the declaration shows to be due may still be recovered, should the judgment for a smaller sum be reversed; and consequently the whole sum claimed is in dispute. *Smith v. Honey*, 3 Peters, 467; *Gordon v. Ogden*, 3 Peters, 39.

In cases where the demand is not for money, and the nature of the action does not require the value of the thing to be stated in the declaration, the practice of the courts of the United States has been to allow the value to be given in evidence. *Ex parte Bradstreet*, 7 Peters, 634.

The onus probandi of the amount in controversy, to establish the jurisdiction of the Supreme Court in a case brought before it by writ of error, is upon the party seeking to obtain the revision of the case. He may prove that the value exceeds \$2000, exclusive of costs. *Hagan v. Foison*, 10 Peters, 160.

The Supreme Court has no jurisdiction in a case in which separate decrees have been entered in the Circuit Court for the wages of seamen, the decree in no one case amounting to \$2000, although the amount of the several decrees exceed that sum, and the seamen in each case claimed under the same contract. *Oliver v. Alexander*, 6 Peters, 143. See *Scott v. Lunt's Adm'rs*, 6 Peters, 349.

The Supreme Court will not compel the hearing of a cause unless the citation be served thirty days before the first day of the term. *Welsh v. Mandeville*, 5 Cranch, 321; 2 Cond. Rep. 268.

A citation must accompany the writ of error. *Lloyd v. Alexander*, 1 Cranch, 385; 1 Cond. Rep. 334.

When an appeal is prayed during the session of the court, a citation to the appellee is not necessary. *Riley, appellant, v. Lamar et al.*, 2 Cranch, 344; 1 Cond. Rep. 419.



sal in either court on such writ of error for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or such plea to a petition or bill in equity, as is in the nature of a demurrer, or for any error in fact. And writs of error shall not be brought but within five years after rendering or passing the judgment or decree complained of, or in case the person entitled to such writ of error be an infant, *feme covert*, *non compos mentis*, or imprisoned, then within five years as aforesaid, exclusive of the time of such disability. (a) And every justice or judge signing a citation on any writ of error as aforesaid, shall take good and sufficient security, that the plaintiff in error shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good. (b)

Writ of error limited.

Plaintiff to give security.
Act of December 12, 1794, chap. 3.

Writ of error a supersedeas.

SEC. 23. *And be it further enacted*, That a writ of error as aforesaid shall be a supersedeas and stay execution in cases only where the writ of error is served, by a copy thereof being lodged for the adverse party in the clerk's office where the record remains, within ten days, Sundays exclusive, after rendering the judgment or passing the decree complained of. Until the expiration of which term of ten days, executions shall not issue in any case where a writ of error may be a supersedeas; and whereupon such writ of error the Supreme or a circuit court shall affirm a judgment or decree, they shall adjudge or decree to the respondent in error just damages for his delay, and single or double costs at their discretion. (c)

Judgment or decree reversed.

SEC. 24. *And be it further enacted*, That when a judgment or decree shall be reversed in a circuit court, such court shall proceed to render such judgment or pass such decree as the district court should have rendered or passed; and the Supreme Court shall do the same on reversals therein, except where the reversal is in favour of the plaintiff, or petitioner in the original suit, and the damages to be assessed, or matter to be decreed, are uncertain, in which case they shall remand the cause for a final decision. And the Supreme Court shall not issue execution in cases that are removed before them by writs of error, but shall send a special mandate to the circuit court to award execution thereupon.

Supreme court not to issue execution but mandate.

Cases in which judgment and decrees of the highest court of a state may be examined by the supreme court, on writ of error.

SEC. 25. *And be it further enacted*, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, (d) or where is drawn in question the construction of any

(a) An appeal under the judiciary acts of 1789 and 1803, was prayed for and allowed within five years; held to be valid, although the security was not given within five years. The mode of taking the security and the time of perfecting it, are exclusively within the control of the court below. *The Dos Hermanos*, 10 Wheat. 306; 6 Cond. Rep. 109.

(b) By the act of December 12, 1794, chap. 3, the security required to be taken on signing a citation on any writ of error which shall not be a supersedeas, and stay execution, shall only be for an amount which will be sufficient to answer for costs.

(c) Supersedeas. The Supreme Court will not quash an execution issued by the court below to enforce its decree, pending a writ of error, if the writ be not a supersedeas to the decree. *Wallen v. Williams*, 7 Cranch, 278; 2 Cond. Rep. 491.

(d) In delivering the opinion of the Supreme Court in the case of *Fisher v. Cockrell*, 5 Peters, 248, Mr. Chief Justice Marshall said: "In the argument the court has been admonished of the jealousy with which the States of the Union view the revising power entrusted by the constitution and laws to this tribunal. To observations of this character the answer uniformly has been that the course of the judicial department is marked out by law. We must tread the direct and narrow path prescribed for us. As this court has never grasped at ungranted jurisdiction, so it never will, we trust, shrink from that which is conferred upon it."

The appellate power of the Supreme Court of the United States extends to cases pending in the State courts, and the 25th section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases by writ of error, is supported by the letter and spirit of the constitution. *Martin v. Hunter's Lessee*, 1 Wheat. 304; 3 Cond. Rep. 675.

Under the 25th section of the judiciary act of 1789, where the construction of any clause in the con-

II

Proceedings
on reversal.

No writs of
error but as
above mention-
ed.

clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before men-

stitution or any statute of the United States is drawn in question, in any suit in a State court, the decision must be against the title or right set up by the party under such clause in the constitution or statute; otherwise the Supreme Court has no appellate jurisdiction in the case. It is not sufficient that the construction of the statute was drawn in question, and that the decision was against the title. It must appear that the title set up depended on the statute. *Williams v. Norris*, 12 Wheat. 117; 6 Cond. Rep. 462.

If the construction or validity of a treaty of the United States is drawn in question in the State courts, and the decision is against its validity, or against the title set up by either party under the treaty, the Supreme Court has jurisdiction to ascertain that title, and to determine its legal meaning; and is not confined to the abstract construction of the treaty itself. *Ibid*.

The 2d article of the constitution of the United States enables the Supreme Court to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such form that the judicial power is capable of acting upon it. That power is capable of acting only when the subject is submitted to it by a party who asserts his right in the form prescribed by law. It then becomes a case. *Osborn v. The Bank of the United States*, 9 Wheat. 738; 6 Cond. Rep. 741.

The Supreme Court has no jurisdiction under the 25th section of the act of 1789, unless the judgment or decree of the State court be a final judgment or decree. A judgment reversing that of an inferior court, and awarding a *scire facias de novo*, is not a final judgment. *Houston v. Moore*, 3 Wheat. 433; 4 Cond. Rep. 286.

The Supreme Court has no appellate jurisdiction under the 25th section of the judiciary act, unless the right, title, privilege, or exemption under a statute or commission of the United States be specially set up by the party claiming it in the State court, and the decision be against the same. *Montgomery v. Hernandez*, 12 Wheat. 129; 6 Cond. Rep. 476.

It is no objection to the exercise of the appellate jurisdiction under this section, that one party is a State, and the other a citizen of that State. *Cohens v. The State of Virginia*, 6 Wheat. 264; 5 Cond. Rep. 90.

In order to bring a case for a writ of error or an appeal to the Supreme Court from the highest court of a State within the 25th section of the judiciary act, it must appear on the face of the record: 1. That some of the questions stated in that section did arise in the State court. 2. That the question was decided in the State court as required in the section.

It is not necessary that the question shall appear in the record to have been raised, and the decision made in direct and positive terms, *ipse iisimis verbis*; but it is sufficient if it appears by clear and necessary intendment that the question must have been raised, and must have been decided, in order to induce the judgment. It is not sufficient to show that a question might have arisen and been applicable to the case, unless it is further shown, on the record, that it did arise and was applied by the State Court to the case. *Crowell v. Randall*, 10 Peters, 368. See also *Williams v. Norris*, 12 Wheat. 117; 6 Cond. Rep. 462. *Jackson v. Langshire*, 3 Peters, 280. *Menard v. Aspasia*, 5 Peters, 505. *Fisher v. Cockrell*, 5 Peters, 248. *Gelston v. Hoyt*, 3 Wheat. 246; 4 Cond. Rep. 244. *Gordon v. Caldwell*, 3 Cranch, 268; 1 Cond. Rep. 524. *Owings v. Norwood's Lessee*, 5 Cranch, 344; 2 Cond. Rep. 275. *Buel et al. v. Van Ness*, 8 Wheat. 312; 5 Cond. Rep. 445. *Miller v. Nicholls*, 4 Wheat. 311; 4 Cond. Rep. 465. *Matthews v. Zane et al.*, 7 Wheat. 164; 5 Cond. Rep. 265. *Gibbons v. Ogden*, 6 Wheat. 448; 5 Cond. Rep. 134.

Under the 25th section of the judiciary act of 1789, three things are necessary to give the Supreme Court jurisdiction of a case brought up by writ of error or appeal: 1. The validity of a statute of the United States, or of authority exercised under a State, must be drawn in question. 2. It must be drawn in question on the ground that it is repugnant to the constitution, treaties and laws of the United States. 3. The decision of the State court must be in favour of its validity. *The Commonwealth Bank of Kentucky v. Griffith et al.*, 14 Peters, 56. See also *Pollard's heirs v. Kibbe*, 14 Peters, 363. *McCluny v. Siliman*, 6 Wheat. 598; 5 Cond. Rep. 197. *Weston et al. v. The City Council of Charleston*, 2 Peters, 449. *Hickie v. Starke et al.*, 1 Peters, 94. *Satterlee v. Mathewson*, 2 Peters, 380. *Wilson et al. v. The Blackbird Creek Marsh Association*, 2 Peters, 245. *Harris v. Dennie*, 3 Peters, 292. *McBride v. Hoey*, 11 Peters, 167. *Winn's heirs v. Jackson et al.*, 12 Wheat. 135; 6 Cond. Rep. 479. *City of New Orleans v. De Armas*, 9 Peters, 324. *Davis v. Packard*, 6 Peters, 41.



tioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute. (a)

Sec. 26. *And be it further enacted*, That in all causes brought before either of the courts of the United States to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other speciality, where the forfeiture, breach or non-performance shall appear, by the default or confession of the defendant, or upon demurrer, the court before whom the action is, shall render judgment therein for the plaintiff to recover so much as is due according to equity. And when the sum for which judgment should be rendered is uncertain, the same shall, if either of the parties request it, be assessed by a jury.

Sec. 27. *And be it further enacted*, That a marshal shall be appointed in and for each district for the term of four years, but shall be removable from office at pleasure, whose duty it shall be to attend the district and circuit courts when sitting therein, and also the Supreme Court in the district in which that court shall sit. (b) And to execute throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty, and to appoint as there shall be occasion, one or more deputies, (c) who shall be removable from office by the judge of the district court, or the circuit court sitting within the district, at the pleasure of either; and before he enters on the duties of his office, he shall become bound for the faithful performance of the same, by himself and by his deputies before the judge of the district court to the United States, jointly and severally, with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by the district judge, in the sum of twenty thousand dollars, and shall take before said judge, as shall also his deputies, before they enter on the duties of their appointment, the following oath of office: "I, A. B., do solemnly swear or affirm, that I will faithfully execute all lawful precepts directed to the marshal of the district of _____, under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of _____, during my continuance in said office, and take only my lawful fees. So help me God."

Sec. 28. *And be it further enacted*, That in all causes wherein the marshal or his deputy shall be a party, the writs and precepts therein shall be directed to such disinterested person as the court, or any justice or judge thereof may appoint, and the person so appointed, is hereby authorized to execute and return the same. And in case of the death of any marshal, his deputy or deputies shall continue in office, unless otherwise specially removed; and shall execute the same in the name of the deceased, until another marshal shall be appointed and sworn: And the defaults or misfeasances in office of such deputy or deputies in the mean time, as well as before, shall be adjudged a breach of the condition of the bond given, as before directed, by the marshal who appointed

In cases of forfeiture the courts may give judgment according to equity.

Jury to assess damages when the sum is uncertain.

Marshal to be appointed.

Duration of office.

Act of May 15, 1820, ch. 102, 107, sec. 8.

Deputies removable by the district and circuit courts.

Sureties.

Oath of marshal, and of his deputies.

If marshal, or his deputy, a party to a suit, process to be directed to a person selected by the court.

Deputies to continue in office on the death of the marshal. Defaults of deputies.

(a) *Williams v. Norris*, 12 Wheat. 117; 4 Cond. Rep. 463.

(b) A marshal is not removed by the appointment of a new one, until he receives notice of such appointment. All acts done by the marshal after the appointment of a new one, before notice, are good; but his acts subsequent to notice are void. *Wallace's C. C. R.* 119.

It is the duty of a marshal of a court of the United States to execute all process which may be placed in his hand, but he performs this duty at his peril, and under the guidance of law. He must, of course, exercise some judgment in the performance. Should he fail to obey the exigent of the writ without a legal excuse, or should he in its letter violate the rights of others, he is liable to the action of the injured party. *Life and Fire Ins. Comp. of New York v. Adams*, 9 Peters, 573.

(c) A marshal is liable on his official bond for the failure of his deputies to serve original process, but the measure of his liability is the extent of the injury received by the plaintiff, produced by his negligence. If the loss of the debt be the direct legal consequence of a failure to serve the process, the amount of the debt is the measure of the damages; but not so if otherwise. *The United States v. Moore's Adm'n*, 2 Brocken. C. C. R. 317. See also *Jose v. Indiana*, 2 Gallis. C. C. R. 311. *Ex parte Jesse Hoyt*, collector, &c., 13 Peters, 279.



Powers of the executor or administrator of deceased marshals.

Marshal's power after removal.

Trial of cases punishable with death to be had in county.

Jurors by lot. Act of May 13, 1800, ch. 61.

Writs of venire facias from clerk's office.

Juries de talibus, &c.

Mode of proof.

Act of April 29, 1802, ch. 31, § 25.

Depositions de bene esse.

them; and the executor or administrator of the deceased marshal shall have like remedy for the defaults and misfeasances in office of such deputy or deputies during such interval, as they would be entitled to if the marshal had continued in life and in the exercise of his said office, until his successor was appointed, and sworn or affirmed: And every marshal or his deputy when removed from office, or when the term for which the marshal is appointed shall expire, shall have power notwithstanding to execute all such precepts as may be in their hands respectively at the time of such removal or expiration of office; and the marshal shall be held answerable for the delivery to his successor of all prisoners which may be in his custody at the time of his removal, or when the term for which he is appointed shall expire, and for that purpose may retain such prisoners in his custody until his successor shall be appointed and qualified as the law directs. (a)

Sec. 29. And be it further enacted, That in cases punishable with death, the trial shall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence. (b) And jurors in all cases to serve in the courts of the United States shall be designated by lot or otherwise in each State respectively according to the mode of forming juries therein now practised, so far as the laws of the same shall render such designation practicable by the courts or marshals of the United States; and the jurors shall have the same qualifications as are requisite for jurors by the laws of the State of which they are citizens, to serve in the highest courts of law of such State, and shall be returned as there shall be occasion for them, from such parts of the district from time to time as the court shall direct, so as shall be most favourable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burthen the citizens of any part of the district with such services. And writs of *venire facias* when directed by the court shall issue from the clerk's office, and shall be served and returned by the marshal in his proper person, or by his deputy, or in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as the court shall specially appoint for that purpose, to whom they shall administer an oath or affirmation that he will truly and impartially serve and return such writ. And when from challenges or otherwise there shall not be a jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court where such defect of jurors shall happen, return *jurymen de talibus circumstantibus* sufficient to complete the pannel; and when the marshal or his deputy are disqualified as aforesaid, jurors may be returned by such disinterested person as the court shall appoint.

Sec. 30. And be it further enacted, That the mode of proof by oral testimony and examination of witnesses in open court shall be the same in all the courts of the United States, as well in the trial of causes in equity and of admiralty and maritime jurisdiction, as of actions at common law. And when the testimony of any person shall be necessary in any civil cause depending in any district in any court of the United States, who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial, or is ancient or very infirm, the deposition of such person may be taken *de bene esse* before any justice or judge of any of the courts of the United States,

(c) If a debtor committed to the State jail under process of the courts of the United States escapes, the marshal is not liable. *Randolph v. Donaldson*, 9 Cranch, 76; 3 Cond. Rep. 280.

(d) The Circuit Courts of the United States are bound to try all crimes committed within the district, which are duly presented before it; but not to try them in the county where they have been committed. *The United States v. Wilson and Porter*, Baldwin's C. C. R. 78.

or before any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States, not being of counsel or attorney to either of the parties, or interested in the event of the cause, provided that a notification from the magistrate before whom the deposition is to be taken to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, be first made out and served on the adverse party or his attorney as either may be nearest, if either is within one hundred miles of the place of such caption, allowing time for their attendance after notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel. (a) And in causes of admiralty and maritime jurisdiction, or other cases of seizure when a libel shall be filed, in which an adverse party is not named, and depositions of persons circumstanced as aforesaid shall be taken before a claim be put in, the like notification as aforesaid shall be given to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice if any given to the adverse party, be by him the said magistrate sealed up and directed to such court, and remain under his seal until opened in court. (b) And any person may be compelled to appear and depose as aforesaid in the same manner as to appear and testify in court. And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in which may be appealed from, if either party shall suggest to and satisfy the court that probably it will not be in his power to produce the witnesses there testifying before the circuit court should an appeal be had, and shall move that their testimony be taken down in writing, it shall be so done by the clerk of the court. (c) And

-Adverse party to be notified.

Notice in admiralty and maritime causes.

Agent notified.

Depositions retained.

Persons may be compelled to appear and testify.

Appeal allowed.

(a) The following cases have been decided relating to depositions taken under the provisions of this act: That the deponent is a seaman on board a gun-boat in the harbour, and liable to be ordered to some other place, and not to be able to attend the court at the time of sitting, is not a sufficient reason for taking his deposition under the act of September 24, 1789, chap. 20.

If it appear on the face of the deposition taken under the act of Congress, that the officer taking the same, was authorized by the act, it is sufficient in the first instance, without any proof that he was such officer. *Ruggles v. Bucknor*, 1 Paine's C. C. R. 358.

Objections to the competency of the witness whose deposition is taken under the act of 1789, should be made at the time of taking the deposition, if the party attend, and the objections are known to him, in order that they may be removed: otherwise he will be presumed to waive them. *United States v. Hairpenolls*, 1 Paine's C. C. R. 400.

A deposition taken under the 30th section of the act of 1789 cannot be made on evidence, unless the judge before whom it was taken, certify that it was reduced to writing by himself, or by the witness in his presence. *Pettibone v. Derringer*, 4 Wash. C. C. R. 215. See *United States v. Smith*, 4 Day, 121. *North Carolina Cases*, 81.

The authority given by the act of 1789, to take depositions of witnesses in the absence of the opposite party, is in derogation of the rules of common law, and has always been construed strictly; and therefore it is necessary to establish that all the requisites have been complied with, before such testimony can be admitted. *Bell v. Morrison et al.*, 1 Peters, 351. *The Patapsco Ins. Comp. v. Southgate*, 5 Peters, 604. *The United States v. Coolidge*, 1 Gallis. C. C. R. 483. *Evans v. Hettick*, 3 Wash. C. C. R. 408. *Thomas and Henry v. The United States*, 1 Brocken. C. C. R. 367.

The provisions of the 30th section of the act of 1789, as to taking depositions, *de bene esse*, does not apply to cases pending in the Supreme Court, but only to cases in the Circuit and District Courts. *The Argo*, 2 Wheat. 287; 4 Cond. Rep. 119.

Where there is an attorney on record, notice must in all cases be given to him. *Ibid.*

The deposition of a person residing out of the State, and more than one hundred miles from the place of trial, cannot be read in evidence. *Bleeker v. Bond*, 3 Wash. C. C. R. 529. See *Buddicum v. Kirke*, 3 Cranch, 293; 1 Cond. Rep. 535.

(b) It is a fatal objection to a deposition taken under the 30th section of the act of 1789, that it was opened out of court. *Beale v. Thompson*, 3 Cranch, 70; 3 Cond. Rep. 35.

(c) Since the act of March 3, 1803, chap. 49, in admiralty as well as in equity cases carried up to the

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Act of March 3, 1803, ch. 40.

Depositions used in case of sickness, death, &c.

Dedimus potestatem as usual.

Executor or administrator may prosecute and defend.

Neglect of executor or administrator to become a party to the suit, judgment to be rendered.

Executor and administrator may have continuance.

Two plaintiffs. Surviving plaintiff may continue suit.

if an appeal be had, such testimony may be used on the trial of the same, if it shall appear to the satisfaction of the court which shall try the appeal, that the witnesses are then dead or gone out of the United States, or to a greater distance than as aforesaid from the place where the court is sitting, or that by reason of age, sickness, bodily infirmity or imprisonment, they are unable to travel and appear at court, but not otherwise. And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause. *Provided*, That nothing herein shall be construed to prevent any court of the United States from granting a *dedimus potestatem* to take depositions according to common usage, when it may be necessary to prevent a failure or delay of justice, (a) which power they shall severally possess, nor to extend to depositions taken in *perpetuam rei memoriam*, which if they relate to matters that may be cognizable in any court of the United States; a circuit court on application thereto made as a court of equity, may, according to the usages in chancery direct to be taken.

Sec. 31. *And be it [further] enacted*, That where any suit shall be depending in any court of the United States, and either of the parties shall die before final judgment, the executor or administrator of such deceased party who was plaintiff, petitioner, or defendant, in case the cause of action doth by law survive, shall have full power to prosecute or defend any such suit or action until final judgment; and the defendant or defendants are hereby obliged to answer thereto accordingly; and the court before whom such cause may be depending, is hereby empowered and directed to hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require. And if such executor or administrator having been duly served with a *scire facias* from the office of the clerk of the court where such suit is depending, twenty days beforehand, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit. (b) And the executor or administrator who shall become a party as aforesaid, shall, upon motion to the court where the suit is depending, be entitled to a continuance of the same until the next term of the said court. And if there be two or more plaintiffs or defendants, and one or more of them shall die, if the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants. (c)

Supreme Court by appeal, the evidence goes with the cause, and it must consequently be in writing. 1 Gallis. C. C. R. 25; 1 Sumner's C. C. R. 328.

(a) When a foreign government refuses to suffer the commission to be executed within its jurisdiction, the Circuit Court may issue letters rogatory for the purpose of obtaining testimony according to the forms and practices of the civil law. Nelson et al. v. The United States, Peters' C. C. R. 256. See *Buddicum v. Kirke*, 3 Cranch, 293; 1 Cond. Rep. 535.

Depositions taken according to the proviso in the 30th section of the judiciary act of 1789, under a *dedimus potestatem*, according to common usage, when it may be necessary to prevent a failure or delay of justice, are, under no circumstances, to be considered as taken *de bene esse*. *Sergeant's Lessee v. Biddle*, 4 Wheat. 508; 4 Cond. Rep. 522.

(b) This statute embraces all cases of death before final judgment, and of course is more extensive than the 17 Car. 2, and 8 and 9 W. 3. The death may happen before or after plea pleaded, before or after issue joined, before or after verdict, or before or after interlocutory judgment; and in all these cases the proceedings are to be exactly as if the executor or administrator were a voluntary party to the suit. *Hatch v. Eustis*, 1 Gallis. C. C. R. 160.

(c) In real and personal actions at common law, the death of the parties before judgment abates the suit, and it requires the aid of some statutory provision to enable the suit to be prosecuted by or against the personal representatives of the deceased, where the cause of action survives. This is effected by the 31st section of the judiciary act of 1789, chap. 20. *Green v. Watkins*, 6 Wheat. 260; 6 Cond. Rep. 87. In real actions the death of either party before judgment, abates the suit. The 31st section of the judiciary act of 1789, which enables the action to be prosecuted by or against the representatives of the

Sec. 32. *And be it further enacted*, That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe. (a)

Sec. 33. *And be it further enacted*, That for any crime or offence against the United States, the offender may, by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found agreeably to the usual mode of process against offenders in such state, and at the expense of the United States, be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offence. (b) And copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case; which recognizances the magistrate before whom the examination shall be, may require on pain of imprisonment. And if such commitment of the offender, or the witnesses shall be in a district other than that in which the offence is to be tried, it shall be the duty of the judge of that district where the delinquent is imprisoned, seasonably to issue, and of the marshal of the same district to execute, a warrant for the removal of the offender, and the witnesses, or either of them, as the case may be, to the district in which the trial is to be had. And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which cases it shall not be admitted but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence, and the usages of law. And if a person committed by a justice of the supreme or a judge of a district court for an offence not punishable with death, shall afterwards procure bail, and there be no judge

Writs shall not abate for defect of form.

Exceptions.

Courts may amend imperfections.

Criminals against U. S. arrested by any justice of the peace.

Act of March 2, 1793, ch. 22.
Act of July 18, 1793, ch. 83.
Recognizance to be returned to the clerk's office.

Offender may be removed by warrant.

Bail admitted.

Bail, how taken.

deceased, when the cause of action survives, is clearly confined to personal actions. *Macker's heirs v. Thomas*, 7 Wheat. 530; 5 Cond. Rep. 334.

(a) The 32d section of the act of 1789, allowing amendments, is sufficiently comprehensive to embrace causes of appellate as well as original jurisdiction; and there is nothing in the nature of an appellate jurisdiction, proceeding according to the common law, which forbids the granting of amendments. 1 Gallis. C. C. R. 22.

If the amendment is made in the Circuit Court, the cause is heard and adjudicated in that court, and upon appeal by the Supreme Court on the new allegation. But if the amendment is allowed by the Supreme Court, the cause is remanded to the Circuit Court, with directions to allow the amendment to be made. *The Mariana Flora*, 11 Wheat. 1; 6 Cond. Rep. 201.

By the provisions of the act of Congress a variance which is merely matter of form may be amended at any time. *Scull v. Biddle*, 2 Wash. C. C. R. 200. See *Smith v. Jackson*, 1 Paine's C. C. R. 486. *Ex parte Bradstreet*, 7 Peters, 534. *Randolph v. Barrett*, 16 Peters, 136. *Hozey v. Buchanan*, 16 Peters, 215. *Woodward v. Brown*, 13 Peters, 1.

(b) The Supreme Court of the United States has jurisdiction, under the constitution and laws of the United States, to bail a person committed for trial on a criminal charge by a district judge of the United States. *The United States v. Hamilton*, 3 Dall. 17.

The circumstances of the case must be very strong, which will, at any time, induce a court to admit a person to bail, who stands charged with high treason. *The United States v. Stewart*, 2 Dall. 343.

Laws of States
rules of deci-
sion.

Parties may
manage their
own cause.

Attorney of
the U. S. for
each district.

His duties.

Compensation.

of the United States in the district to take the same, it may be taken by any judge of the supreme or superior court of law of such state.

SEC. 34. *And be it further enacted*, That the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply. (a)

SEC. 35. *And be it further enacted*, That in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as a compensation for his

(a) The 34th section of the judiciary act of 1789, does not apply to the process and practice of the courts. It merely furnishes a decision, and is not intended to regulate the remedy. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

In construing the statutes of a State, infinite mischief would ensue, should the federal courts observe a different rule from that which has long been established in the State. *McKeen v. Delancy's Lessee*, 5 Cranch, 22; 2 Cond. Rep. 179.

In cases depending on the statutes of a State, and more especially in those respecting the titles to land, the federal courts adopt the construction of the State, where that construction is settled or can be ascertained. *Polk's Lessee v. Wendall*, 9 Cranch, 87; 3 Cond. Rep. 286.

The Supreme Court uniformly acts under a desire to conform its decisions to the State courts on their local law. *Mutual Assurance Society v. Watts*, 1 Wheat. 272; 3 Cond. Rep. 570.

The Supreme Court holds in the highest respect, decisions of State Courts upon local laws, forming rules of property. *Shipp et al. v. Miller's heirs*, 2 Wheat. 316; 4 Cond. Rep. 132.

When the construction of the statute of the State relates to real property, and has been settled by any judicial decision of the State where the land lies, the Supreme Court, upon the principles uniformly adopted by it, would recognize the decision as part of the local law. *Gardner v. Collins*, 2 Peters, 58.

In construing local statutes respecting real property, the courts of the Union are governed by the decisions of State tribunals. *Thatcher et al. v. Powell*, 6 Wheat. 119; 5 Cond. Rep. 23.

The courts of the United States, in cases depending on the laws of a particular State, will in general adopt the construction given by the courts of the State, to those laws. *Elmendorf v. Taylor*, 10 Wheat. 152; 6 Cond. Rep. 47.

Under the 34th section of the judiciary act of 1789, the acts of limitation of the several States where no special provision has been made by Congress, form rules of the decision in the courts of the United States; and the same effect is given to them as is given in the State courts. *McCluny v. Silliman*, 3 Peters, 270.

The statute laws of the States must furnish the rules of decision to the federal courts, as far as they comport with the laws of the United States, in all cases arising within the respective States; and a fixed and received construction of these respective statute laws in their own courts, makes a part of such statute law. *Shelby et al. v. Guy*, 11 Wheat. 361; 6 Cond. Rep. 345.

The Supreme Court adopts the local law of real property as ascertained by the decisions of State courts; whether those decisions are grounded on the construction of the statutes of the State, or from a part of the unwritten law of the State, which has become a fixed rule of property. *Jackson v. Chew*, 12 Wheat. 153; 6 Cond. Rep. 489.

Soon after the decision of a case in the Circuit Court for the district of Virginia, a case was decided in the court of appeals of the State, on which the question on the execution laws of Virginia was elaborately argued, and deliberately decided. The Supreme Court, according to its uniform course, adopts the construction of the act, which is made by the highest court of the State. *The United States v. Morrison*, 4 Peters, 124.

The Supreme Court has uniformly adopted the decisions of the State tribunals, respectively, in all cases where the decision of a State court has become a rule of property. *Green v. Neal*, 8 Peters, 291.

In all cases arising under the constitution and laws of the United States, the Supreme Court may exercise a revising power, and its decisions are final and obligatory on all other tribunals, State as well as federal. A State tribunal has a right to examine any such questions, and to determine thereon, but its decisions must conform to those of the Supreme Court, or the corrective power of that court may be exercised. But the case is very different when the question arises under a local law. The decision of this question by the highest tribunal of a State, should be considered as final by the Supreme Court; not because the State tribunal has power, in such a case, to bind the Supreme Court, but because, in the language of the court in *Shelby v. Guy*, 11 Wheat. 361, a fixed and received construction by a State, in its own courts, makes a part of the statute law. *Ibid.* See also *Smith v. Clapp*, 15 Peters, 125. *Watkins v. Holman et al.*, 16 Peters, 25. *Long v. Palmer*, 16 Peters, 66. *Golden v. Price*, 3 Wash. C. C. R. 313. *Campbell v. Claudius, Peters' C. C. R. 434.* *Henderson and Wife v. Griffin*, 5 Peters, 151. *Coates' executrix v. Muse's adm'r.*, 1 Brocken. C. C. R. 539. *Parsons v. Bedford et al.*, 3 Peters, 433.



services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided. (a)

APPROVED, September 24, 1789.

Attorney General of the U. S.

Duties.

Act of May 29, 1830, ch. 153.

Compensation.

STATUTE I.

Sept. 29, 1789.

CHAP. XXI.—An Act to regulate Processes in the Courts of the United States.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all writs and processes issuing from a supreme or a circuit court shall bear test of the chief justice of the supreme court, and if from a district court, shall bear test of the judge of such court, and shall be under the seal of the court from whence they issue; and signed by the clerk thereof. The seals of the supreme and circuit courts to be provided by the supreme court, and of the district courts, by the respective judges of the same.

SEC. 2. *And be it further enacted,* That until further provision shall be made, and except where by this act or other statutes of the United States is otherwise provided, the forms of writs and executions, except their style, and modes of process and rates of fees, except fees to judges, in the circuit and district courts, in suits at common law, shall be the same in each state respectively as are now used or allowed in the supreme courts of the same. (b) And the forms and modes of proceedings in

Act of May 29, 1790, ch. 13.

Act of Feb. 18, 1791, ch. 8.

Writs to bear test of the Chief Justice.

To be under the seal of the Court from which they issue.

Act of May 8, 1792, ch. 36.

Act of May 19, 1828, ch. 68. Forms of writs and executions

(a) The acts relating to the compensation of the Attorney General of the United States are: Act of March 2, 1797; act of March 2, 1799, chap. 33; act of February 20, 1804, chap. 12; act of February 20, 1819, chap. 27; act of May 29, 1830, chap. 153, sec. 10; act of 1789, ch. 18.

(b) The 34th section of the judiciary act of 1789, authorizes the courts of the United States to issue writs of execution as well as other writs. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

Whenever, by the state laws in force in 1789, a *capias* might issue from a state court, the acts of 1789 and 1792, extending in terms to that species of writ, must be understood to have adopted its use permanently in the federal courts. *Bank of the United States v. January*, 10 Wheat. 66—in note.

The process act of 1792, chap. 36, is the law which regulates executions issuing from the courts of the United States, and it adopts the practice of the supreme courts of the States existing in 1789, as the rule for governing proceedings on such executions, subject to such alterations as the Supreme Court of the United States may make; but not subject to the alterations which have since taken place in the State laws and practice. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

At an early period after the organization of the federal courts, the rules of practice in the State courts, which were similar to the English practice, were adopted by the judges of the Circuit Court. A subsequent change in the practice of the State courts will not authorize a departure from the rules first adopted in the Circuit Court. 1 Peters' C. C. R. 1.

Whenever by the laws of the United States a defendant may be arrested, the process of arrest employed in the State may be adopted. *Burr's trial*, 431.

The process act of 1828 was passed shortly after the decision of the Supreme Court of the United States, in the case of *Wayman v. Southard*, and the *Bank of the United States v. Halstead*, and was intended as a legislative sanction of the opinions of the court in those cases. The power given to the courts of the United States to make rules and regulations on final process, so as to conform the same to the laws of the States on the same subject, extends to future legislation; and as well to the modes of proceeding on executions as to the forms of writs. *Ross and King v. Duval et al.*, 13 Peters, 45.

The first judiciary act of 1789, chap. 20, does not contemplate compulsive process against any person, in any district, unless he be an inhabitant of, or found within the same district at the time of serving the writ. *Picquet v. Swann*, 5 Mason's C. C. R. 35.

Congress have by the constitution, exclusive authority to regulate proceedings in the courts of the United States, and the States have no authority to control those proceedings, except so far as the State process acts are adopted by Congress, or by the courts of the United States under the authority of Congress. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

The laws of the United States authorize the courts of the United States so to alter the form of process of execution used in the Supreme Court of the United States in 1789, as to subject to executions

to be the same as used in the Supreme Courts of the States.

Fees to be the same as in the Supreme Courts of the States.

Limitation.

causes of equity, and of admiralty and maritime jurisdiction, (a) shall be according to the course of the civil law; and the rates of fees the same as are or were last allowed by the states respectively in the court exercising supreme jurisdiction in such causes. (b) *Provided*, That on judgments in any of the cases aforesaid where different kinds of executions are issuable in succession, a *capias ad satisfaciendum* being one, the plaintiff shall have his election to take out a *capias ad satisfaciendum* in the first instance and be at liberty to pursue the same until a tender of the debt and costs in gold or silver shall be made.

SEC. 3. *And be it further enacted*, That this act shall continue in force until the end of the next session of Congress, and no longer.

APPROVED, September 29, 1789.

STATUTE I.

Sept. 29, 1789.

CHAP. XXII.—*An Act to explain and amend an Act, intitled "An Act for registering and clearing Vessels, regulating the Coasting Trade, and for other purposes."*

Act of Sept. 1, 1789, ch. 11.
Repealed by Act of February 18, 1793, ch. 8.
Goods unladen by permit and transported to a landing in the same district, to be accompanied with a certificate from the Inspector or other proper officer.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when any goods, wares or merchandise of foreign growth or manufacture, shall be unladen from any ship or vessel in virtue of a permit obtained for that purpose, and shall be put into a craft or vessel, with intent to be transported to a landing within the same district, it shall be the duty of the inspector, or other officer attending the unloading of such goods, wares and merchandise, to deliver to the master or commander of every such craft or vessel, a certificate of such goods, wares and merchandise having been duly entered, and a permit granted therefor; and such certificate shall contain a description of all the packages with their marks and numbers, and shall authorize the transportation and landing of the same, at any landing within the same district, without any further fee or permit, any thing in the said recited act to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That so much of the twenty-second section of the said recited act, as exempts vessels of less than twenty,

issuing out of the courts of the United States, lands and other property not thus subject by the State laws in force at that time. *Bank of the United States v. Halsted*, 10 Wheat. 51; 6 Cond. Rep. 22.

See *Fullerton v. The Bank of the United States*, 1 Peters, 604. *Yeaston v. Leno*, 3 Peters, 123. *Toland v. Sprague*, 12 Peters, 306.

The process act of 1825, expressly adopts the mesne process and modes of proceeding in suits at common law, then existing in the highest State court, under the State laws, which of course included all the regulations of the State laws as to bail, and exemption of the party from arrest and imprisonment. In regard also to writs of execution, and other final process, and "the proceedings thereupon," it adopts an equally comprehensive language, and declares they shall be the same as were then used in the courts of the State. *Beers v. Naughton*, 9 Peters, 329. *The Lessee of Walden v. Craig's heirs*, 14 Peters, 147. *The United States v. Knight*, 14 Peters, 301. *Amis v. Smith*, 16 Peters, 303.

So far as the acts of Congress have adopted the forms of process and modes of proceeding and pleading in the State courts, or have authorized the courts to adopt them, and have actually adopted them, they are obligatory; and no further. But no court of the United States is authorized to adopt by rule any provision of State laws which are repugnant to, or incompatible with the positive enactment of Congress upon the jurisdiction, or practice, or proceedings of such courts. *Keary et al. v. The Farmers and Mechanics Bank of Memphis*, 16 Peters, 82. *Duncan v. Darst*, 17 Peters, 209.

(a) The act regulating processes in the courts of the United States, provides that the forms and modes of proceeding in the courts of equity, and in those of admiralty and maritime jurisdiction, shall be according to the principles, rules, and usages which belong to courts of equity, and to courts of admiralty, respectively, as contradistinguished from the courts of common law, subject, however, to alterations by the courts. This act has been generally understood to adopt the principles, rules, and usages of the court of chancery in England. *Manro v. Almedia*, 10 Wheat. 473; 6 Cond. Rep. 190.

(b) The compensation to clerks of courts are regulated by the acts of March 3, 1791, chap. 22, sec. 1; act of May 8, 1792, chap. 36, sec. 3; act of February 23, 1799, chap. 19, sec. 3; act of April 18, 1814, chap. 79; act of March 8, 1824, chap. 26; act of March 8, 1841, chap. 33. Compensation of Marshals, act of March 3, 1791, chap. 22, sec. 1; act of May 8, 1792, chap. 36, sec. 8; act of February 28, 1799, chap. 19, sec. 2; act of April 18, 1814, chap. 79; act of March 8, 1824, chap. 26; act of March 3, 1841, chap. 33.

and not less than five tons burthen, employed between any of the districts of the United States, in any bay or river, and having a license from the collector of the district to which such vessel belongs, from entering and clearing for the term of one year, be extended to vessels not exceeding fifty tons: *provided*, such vessels shall not have on board goods, wares or merchandise, other than such as are actually the growth or produce of the United States.

SEC. 3. *And be it further enacted*, That so much of an act, intituled, "An act to regulate the collection of the duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States," as hath rated the ruble of Russia at one hundred cents, be, and the same is hereby repealed and made null and void.

APPROVED, September 29, 1789.

Exemption of vessels under 20 tons, from entering and clearing extended to vessels of 50 tons having on board goods, &c., the growth or produce of the U. S.

Act of July 31, 1789, ch. 5. 1790, ch. 35, § 75.

Ruble of Russia, rate of. Repealed.

STATUTE I.

CHAP. XXIII.—*An Act making Appropriations for the Service of the present year.*

Sept. 29, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be appropriated for the service of the present year, to be paid out of the monies which arise, either from the requisitions heretofore made upon the several states, or from the duties on impost and tonnage, the following sums, viz. A sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list, under the late and present government; a sum not exceeding one hundred and thirty-seven thousand dollars for defraying the expenses of the department of war: a sum not exceeding one hundred and ninety thousand dollars for discharging the warrants issued by the late board of treasury, and remaining unsatisfied; and a sum not exceeding ninety-six thousand dollars for paying the pensions to invalids.

APPROVED, September 29, 1789.

[Expired.] Specific appropriations of money for expenses of civil list and war department;

also to discharge warrants of late board of treasury, and for pensions to invalids.

STATUTE I.

CHAP. XXIV.—*An Act providing for the payment of the Invalid Pensioners of the United States.*

Sept. 29, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the military pensions which have been granted and paid by the states respectively, in pursuance of the acts of the United States in Congress assembled, to the invalids who were wounded and disabled during the late war, shall be continued and paid by the United States, from the fourth day of March last, for the space of one year, under such regulations as the President of the United States may direct.

APPROVED, September 29, 1789.

Act of July 16, 1790, ch. 27.

[Expired.] Military pensions heretofore paid by the States to be paid from 4th March last for one year, and under what regulations.

STATUTE I.

CHAP. XXV.—*An Act to recognize and adapt to the Constitution of the United States the establishment of the Troops raised under the Resolves of the United States in Congress assembled, and for other purposes therein mentioned.*

Sept. 29, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the establishment contained in the resolve of the late Congress of the third day of October, one thousand seven hundred and eighty-seven, except

[Repealed.] Act of April 30, 1790, ch. 10, sec. 14.

Establishment of 3d Oct. 1787, recognized for troops in the service of U. S.

Pay and allowance of troops.

To take oath to support the Constitution, and bear allegiance to the United States.

Troops to be governed by rules and articles of war.

For protecting frontiers, President may call forth the militia.

Pay and subsistence.

Continuance of this act.

as to the mode of appointing the officers, and also as is herein after provided, be, and the same is hereby recognized to be the establishment for the troops in the service of the United States.

SEC. 2. *And be it further enacted*, That the pay and allowances of the said troops be the same as have been established by the United States in Congress assembled, by their resolution of the twelfth of April, one thousand seven hundred and eighty-five.

SEC. 3. *And be it further enacted*, That all commissioned and non-commissioned officers and privates, who are or shall be in the service of the United States, shall take the following oaths or affirmations, to wit: "I, A. B. do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States." "I, A. B. do solemnly swear or affirm (as the case may be) to bear true allegiance to the United States of America, and to serve them honestly and faithfully against all their enemies or opposers whatsoever, and to observe and obey the orders of the President of the United States of America, and the orders of the officers appointed over me."

SEC. 4. *And be it further enacted*, That the said troops shall be governed by the rules and articles of war which have been established by the United States in Congress assembled, or by such rules and articles of war, as may hereafter by law be established.

SEC. 5. *And be it further enacted*, That for the purpose of protecting the inhabitants of the frontiers of the United States from the hostile incursions of the Indians, the President is hereby authorized to call into service from time to time, such part of the militia of the states respectively, as he may judge necessary for the purpose aforesaid; and that their pay and subsistence while in service, be the same as the pay and subsistence of the troops above mentioned.

SEC. 6. *And be it further enacted*, That this act shall continue and be in force until the end of the next session of Congress, and no longer.

APPROVED, September 29, 1789.

STATUTE I.

Sept. 29, 1789.

CHAP. XXVII.—*An Act to alter the Time for the next Meeting of Congress.*

[Expired.]

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That after the adjournment of the present session, the next meeting of Congress shall be on the first Monday in January next.

APPROVED, September 29, 1789.

August 26, 1789.

RESOLUTIONS.

Survey directed by act of June 8, 1788, to be made and returned by Secretary of the Treasury without delay.

1. RESOLVED, That the Survey directed by Congress in their act of June the sixth, one thousand seven hundred and eighty-eight, be made and returned to the Secretary of the Treasury without delay; and that the President of the United States be requested to appoint a fit person to complete the same, who shall be allowed five dollars per day whilst actually employed in the said service, with the expenses necessarily attending the execution thereof.

APPROVED, August 26, 1789.

Sept. 23, 1789.

Recommendation to the Legislatures of the several States to pass laws making it the duty of keepers of prisons to

2. RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, That it be recommended to the legislatures of the several States to pass laws, making it expressly the duty of the keepers of their jails, to receive and safe keep therein all prisoners committed under the authority of the United States, until they shall be discharged by due course of the laws thereof, under the



like penalties as in the case of prisoners committed under the authority of such States respectively; the United States to pay for the use and keeping of such gaols, at the rate of fifty cents per month for each prisoner that shall, under their authority, be committed thereto, during the time such prisoner shall be therein confined; and also to support such of said prisoners as shall be committed for offences.

APPROVED, September 23, 1789.

receive and keep prisoners committed under authority of the United States.

3. RESOLVED, That it shall be the duty of the Secretary of State, to procure from time to time such of the statutes of the several states as may not be in his office.

APPROVED, September 23, 1789.

Sept. 23, 1789.

Secretary of State to procure the statutes of the States.

The Conventions of a number of the States having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the government will best insure the beneficent ends of its institution—

RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, That the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States, all or any of which articles, when ratified by three fourths of the said legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.:

Amendments to the Constitution of the United States.

ARTICLES in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.

ART. I. After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

ART. II. No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

ART. III. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Adopted.

ART. IV. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Adopted.

ART. V. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Adopted.

ART. VI. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, sup-

Adopted.

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I

ported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Adopted.

ART. VII. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

Adopted.

ART. VIII. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

Adopted.

ART. IX. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Adopted.

ART. X. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Adopted.

ART. XI. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Adopted.

ART. XII. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Sept. 29, 1789.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That John White, late a commissioner to settle the accounts between the United States and the states of Pennsylvania, Delaware, and Maryland, and his clerks, John Wright, and Joshua Dawson, be considered as in office until the fourth day of February, one thousand seven hundred and eighty-nine.

APPROVED, September 29, 1789.



Proof-of-Claim – B. 4 / 8

**Chap. XXII.-- An Act to regulate the collection of
duties on imports and tonnage.**

1 Stat. 627

Statute III.

March 2, 1799.

2021-016195 MISC Page: 146 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



.Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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SEC. 2. *And be it further enacted*, That the commissioners under the said act, for each state, respectively, shall be, and hereby are authorized to extend the time thereby allowed for receiving appeals by the principal assessors, and also the time so allowed for returning lists by the assistant assessors in all cases where the said commissioners shall deem such extension necessary, and for such time as they shall think expedient, and that so much of the twentieth section of the above mentioned act, as requires all appeals to be made in writing, be, and it is hereby repealed.

Amendments of the former act respecting the time of returning lists and respecting appeals.

SEC. 3. *And be it further enacted*, That the Secretary of the Treasury shall be, and hereby is authorized and empowered, under the direction of the President of the United States, to augment, in cases where he may find it necessary, the compensations fixed for principal and assistant assessors, by said act, so, however, as that no principal or assistant assessor shall, in any case, receive more than two dollars per day, which additional compensations shall be subject to the same rules of settlement as are established by the aforesaid act respecting the compensations therein fixed for principal and assistant assessors.

Compensations to assessors may be augmented.

APPROVED, February 28, 1799.

STATUTE III.

CHAP. XXI.—*An Act altering the time of holding the District Court in Vermont.*

Feb. 28, 1799.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the session of the district court for the district of Vermont, by law appointed to be holden at Rutland in said district on the first Monday of May annually, shall hereafter be holden at Rutland in said district on the second Monday of May annually.

1802, ch. 31.
1816, ch. 31.

SEC. 2. *And be it further enacted*, That all process which shall have been issued, and all recognizances returnable, and all suits and other proceedings which have been continued to the said district court on the first Monday of May next, shall be returned and held continued to the said court on the second Monday of May next.

APPROVED, February 28, 1799.

STATUTE III.

CHAP. XXII.—*An Act to regulate the collection of duties on imports and tonnage.*

March 2, 1799.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the state of New Hampshire shall be one district, to be called the district of Portsmouth, of which the town of Portsmouth shall be the sole port of entry, and the towns of Newcastle, Dover and Exeter, ports of delivery only; but all ships or vessels, bound to or from either of the said ports of delivery, shall first come to, enter and clear at Portsmouth; and a collector, naval officer and surveyor for the said district, shall be appointed, to reside at Portsmouth; and the authority of the officers of the said district shall, for the purposes of this act, extend to the northern boundary line of the said state of New Hampshire, adjoining to the British colony of Lower Canada. (a)

Districts and ports in New Hampshire.

1801, ch. 6.
1822, ch. 25.
1811, ch. 31.

SEC. 2. *And be it further enacted*, That in the state of Massachusetts there shall be twenty-two districts and ports of entry, to wit: Newburyport, Ipswich, Gloucester, Salem and Beverly, as one; Marblehead, Boston and Charlestown, as one; Plymouth, Barnstable, Nantucket, Edgartown, New Bedford, Dighton, York, Biddeford and Pepperelborough, as one; Portland and Falmouth, as one; Bath, Wiscasset, Penobscot, Frenchman's Bay, Machias, Passamaquoddy and Waldoborough.

Districts and ports in Massachusetts.

(a) By the act of April 17, 1822, additional districts were established in New Hampshire.

Districts and
ports in Mas-
sachusetts.

To the district of Newburyport, shall be annexed the several towns or landing places of Almsbury, Salisbury, Haverhill and Newbury, which shall be ports of delivery only; and a collector, naval officer, and surveyor for the district shall be appointed, to reside at Newburyport.

To the district of Gloucester shall be annexed the town of Manchester, as a port of delivery only; and a collector and surveyor shall be appointed for the district, to reside at Gloucester.

To the district of Salem and Beverly shall be annexed the town or landing place of Danvers, as a port of delivery only; and a collector, naval officer and surveyor, for the district, shall be appointed, to reside at Salem, and a surveyor, to reside at the town of Beverly.

To the district of Marblehead shall be annexed the town of Lynn, as a port of delivery only; and a collector for the district shall be appointed, to reside at Marblehead.

To the district of Boston and Charlestown shall be annexed the towns or landing places of Medford, Cohasset, Hingham and Weymouth, as ports of delivery only; and a collector, naval officer and surveyor for the district, shall be appointed, to reside at Boston.

To the district of Plymouth shall be annexed the several towns or landing places of Scituate, Duxbury and Kingston, as ports of delivery only; and a collector for the district shall be appointed, to reside at Plymouth.

To the district of Barnstable shall be annexed the several towns or landing places of Sandwich, Falmouth, Hardwich, Wellfleet, Provincetown and Chatham, as ports of delivery only; and a collector for the district shall be appointed, to reside at Barnstable.

In the district of Nantucket, the port of Nantucket shall be the sole port of entry and delivery; and a collector for the district shall be appointed, to reside at Nantucket.

In the district of Edgartown, a collector for the district shall be appointed, to reside at Edgartown.

To the district of New Bedford shall be annexed Westport, Rochester and Wareham, as ports of delivery only; and a collector for the district shall be appointed, to reside at New Bedford.

To the district of Dighton shall be annexed Swansey, Somerset, Free-town, Berkeley and Taunton, as ports of delivery only; and a collector for the district shall be appointed to reside at Dighton.

To the district of York shall be annexed Kittery and Berwick, as ports of delivery only; and a collector for the district shall be appointed, to reside at York.

To the district of Biddeford and Pepperelborough shall be annexed Scarborough, Wells, Kennebunk and Cape Porpoise, as ports of delivery only; and a collector for the district shall be appointed, to reside at Biddeford.

To the district of Portland and Falmouth shall be annexed North Yarmouth, Brunswick, Freeport and Harpswell, as ports of delivery only; and a collector and surveyor shall be appointed for the district, to reside at Portland.

To the district of Bath shall be annexed Hallowell, Pittstown, Topsham, Georgetown and Brunswick, as ports of delivery only; and a collector for the district shall be appointed, to reside at Bath.

To the district of Wiscasset shall be annexed the town of Boothbay, as a port of delivery only; and a collector for the district shall be appointed, to reside at Wiscasset.

To the district of Penobscot shall be annexed Frankfort, Bluehill, Hampden and Deer Island, as ports of delivery only; and a collector for the district shall be appointed, to reside at Castine; which shall be the port of entry for the said district.

To the district of Frenchman's Bay shall be annexed Union River, as



a port of delivery only; and a collector for the district shall be appointed, to reside at Frenchman's Bay.

For each of the districts of Machias and Passamaquoddy, shall be appointed a collector, to reside at the said ports of Machias and Passamaquoddy respectively.

To the district of Waldoborough shall be annexed the towns of Bristol, Nobleborough, Warren, Thomaston, Cushing and Cambden; also that part of a place called Ducktrap, which lies between the towns of Cambden and Northport, as ports of delivery only; and a collector for the district shall be appointed, to reside at Waldoborough, and a surveyor, to reside at Thomaston.

The district of Ipswich shall include the town of Ipswich, as a port of entry only; and a collector for the district shall be appointed, to reside at Ipswich.

The district of Newburyport shall include all the waters and shores from the state of New Hampshire to the north line of Ipswich.

The district of Gloucester shall include all the waters and shores in the towns of Gloucester and Manchester.

The district of Salem and Beverly shall include all the shores and waters within the towns of Beverly, Salem and Danvers.

The district of Marblehead shall include all the waters and shores within the towns of Marblehead and Lynn.

The district of Boston and Charlestown shall include all the waters and shores within the counties of Middlesex, Suffolk and Norfolk.

The district of Plymouth shall include all the waters and shores within the county of Plymouth, excepting the towns of Wareham and Rochester.

The district of Barnstable shall include all the waters and shores within the county of Barnstable.

The district of Nantucket shall include the island of Nantucket.

The district of Edgartown shall include all the waters and shores within the county of Duke's county.

The district of New Bedford shall include all the waters and shores within the towns of New Bedford, Dartmouth, Westport, Rochester and Wareham, together with all the islands within the county of Bristol.

The district of Dighton shall include all the waters and shores on Taunton river, and in the town of Rehoboth.

The district of Waldoborough shall include all the waters and shores from the middle of Damarascotty river to the southwardly side of the town of Northport.

The collectors of the several districts within that part of the state of Massachusetts, eastward of New Hampshire, shall, from time to time, agree upon a divisional line between their respective districts, and transmit the same to the comptroller of the treasury; and such districts so agreed upon, shall include all the waters, shores, and islands within the same, and all the lands adjoining to the British colonies of New Brunswick and Lower Canada, within the eastern part of the state of Massachusetts aforesaid. And in case of disagreement between any of the said collectors, concerning such divisional line, the President of the United States shall determine the same.

Sec. 3. And be it further enacted, That in the state of Rhode Island and Providence Plantations, there shall be two districts, to wit: the district of Newport, and the district of Providence. The district of Newport shall comprehend all the waters, shores, bays, harbors, creeks, and inlets, from the west line of the said state, all along the sea-coast; and northward, up the Narraganset bay, as far as the most southerly part of Warwick Neck, and from thence nearly a northeast course, to the south end of Rumstick Point, at high water mark, and shall include the several towns, harbors, and landing places at Westerly, Charleston, South

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Districts and
ports in Massa-
chusetts.

Districts and
ports in Rhode
Island.

Districts and
ports in Rhode
Island.

Kingston, North Kingston, East Greenwich, and all that part of Warwick southward of Warwick Neck, and also the towns, harbors, and landing places of Barrington, Warren, Bristol, Tiverton, Little Compton, and all the towns, harbors, and landing places of the island of Rhode Island, Jamestown, Prudence, New Shoreham, and every other island and place within the said state, southward of Warwick Neck and Rumstick Point.

The district of Providence shall comprehend all the waters, shores, bays, harbors, creeks and inlets, within the state of Rhode Island, northward of a line running nearly a northeast course from the south end of Warwick Neck to the south end of Rumstick Point at high water mark, including only the waters bounded by the east and west shores of said Rumstick Point and Warwick Neck, leading up the bay of the port of Providence. The town of Newport shall be the sole port of entry in the said district of Newport; and a collector, naval officer and surveyor for the district shall be appointed, to reside at the said town of Newport: and North Kingston, East Greenwich, Barrington, Warren, Bristol and Pawcatuck river in Westerly, shall be ports of delivery only; and a surveyor shall be appointed, to reside at each of the ports of North Kingston, East Greenwich, Warren, Bristol and Pawcatuck river; and the surveyor to reside at Warren shall be surveyor for the port of Barrington. The town of Providence shall be the sole port of entry, in the said district of Providence; and Patuxet in the same district shall be a port of delivery only; and a collector, naval officer and surveyor shall be appointed, to reside at Providence; and a surveyor shall be appointed, to reside at Patuxet.

Districts and
ports in Con-
necticut.

SEC. 4. *And be it further enacted*, That in the state of Connecticut there shall be four districts, to wit: New London, New Haven, Fairfield and Middletown. The district of New London shall extend from the east line of the said state of Connecticut to the east line of the town of Lyme, and shall include the several towns or landing places of Norwich, Stonington and Groton, as ports of delivery only; and New London to be the sole port of entry; and a collector and surveyor for the district shall be appointed, to reside at New London; and a surveyor, to reside at Stonington.

The district of New Haven shall extend from the west line of the district of New London, westerly to Ousatumnick river, to which shall be annexed the several towns, or landing places of Guildford, Branford, Milford and Derby, as ports of delivery only; and New Haven shall be the sole port of entry; and a collector and surveyor for the district shall be appointed, to reside at New Haven.

The district of Fairfield shall include all the ports and places in the said state of Connecticut west of the district of New Haven, to which shall be annexed the several towns or landing places of Norwalk, Stratford, Stamford and Greenwich, as ports of delivery only; Fairfield shall be the sole port of entry; and a collector for the district shall be appointed, to reside at Fairfield.

The district of Middletown shall include the several towns and landing places of Lyme, Saybrook, Killingsworth, Haddam, East Haddam, Middletown, Chatham, Weathersfield, Glastenbury, Hartford, East Hartford, Windsor and East Windsor, of which Middletown shall be the sole port of entry; and the other towns and landing places before named, shall be ports of delivery only; and a collector and surveyor shall be appointed, to reside at Middletown; and a surveyor shall be appointed, to reside at Hartford, and another to reside at Saybrook.

Districts and
ports in New
York.

SEC. 5. *And be it further enacted*, That in the state of New York, there shall be six districts, to wit: Sag Harbor on Nassau or Long Island, the city of New York, the city of Hudson, Champlain, Oswego and Niagara.



The district of Sagg Harbor shall include all the bays, harbors, rivers and shores, within the two points of land which are called Oyster Pond point, and Mantauck point; and a collector for the district shall be appointed, to reside at Sagg Harbor, which shall be the only port of entry and delivery in the said district.

Districts and
ports in New
York.

The district of the city of New York shall include all such part of the coasts, rivers, bays and harbors of the said state as are not included in other districts of the said state, especially the several towns or landing places of New Windsor, Newburgh, Poughkeepsie, Esopus, Kinderhook and Albany, as ports of delivery only; and a collector, naval officer and surveyor for the district shall be appointed, to reside at New York, which shall be the sole port of entry for the district; and a surveyor, at the city of Albany: and the President of the United States is authorized, if he judge it expedient, to appoint one other surveyor, to reside at such other place in the said district as he shall appoint.

The district of Hudson shall include all the waters and shores of the said city; and a collector shall be appointed for the said district, to reside at the said city of Hudson, which shall be the sole port of entry and delivery.

The district of Champlain shall include all such shores and waters of Lake Champlain, and the rivers connected therewith, as lie within the said state of New York; and the said district shall extend westwardly along the northern boundary line of the said state, unto the place where said line is bounded by the river St. Lawrence; and the President of the United States is hereby authorized to appoint such place within the said district to be a port of entry and delivery, as he shall judge expedient; and a collector shall be appointed, to reside at the port of entry which may be established within the said district; and the President is also authorized, if he shall judge proper, to appoint, not exceeding two surveyors, to reside at such places as he may judge expedient to constitute ports of delivery only.

The district of Oswego shall include all the shores and waters of the river St. Lawrence, from the place where said river is intersected by the forty-fifth degree of northern latitude, and all the shores and waters of Lake Ontario, and the rivers and waters connected therewith, lying within the jurisdiction of the United States, and within the state of New York, to the eastward of the west bank of Genesee river; and a collector shall be appointed, who shall reside at or near Oswego, at such place as the President of the United States shall appoint to be the port of entry for the district; and the President of the United States is authorized to appoint not exceeding three surveyors, to reside at such places within the said district, as he shall judge proper, and to constitute each or either of such places to be ports of delivery only.

The district of Niagara shall include all the shores and waters of Lake Ontario and Lake Erie, and the rivers connected therewith, lying within the jurisdiction of the United States, and within the state of New York, to the westward of the west bank of Genesee river; and a collector shall be appointed who shall reside at Niagara, which shall be the sole port of entry for the district; and the President of the United States is authorized to appoint, not exceeding two surveyors, to reside at such places within the said district, as he shall judge proper, and to constitute each or either of such places to be the ports of delivery only.

Sec. 6. *And be it further enacted*, That the state of Vermont shall constitute one district, which shall include all such shores and waters of Lake Champlain, and the rivers connected therewith, as lie within the said state, and shall also extend along the northern boundary line of the said state, adjoining to the British colony of Lower Canada; and the President of the United States is authorized to appoint such place within the said district, to be the sole port of entry, as he shall judge

Districts and
ports in Ver-
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Districts and
ports in Ver-
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proper; and a collector shall be appointed to reside thereat; and the President of the United States is also authorized, if he judge it expedient, to establish not exceeding two places as ports of delivery only, and to appoint surveyors for each, or either of said places, at his discretion: *Provided nevertheless*, that the President of the United States may, whenever he shall judge it expedient, and for the interest of the United States, erect the northern boundary line of the said state, adjoining the British colony of Lower Canada, or so much thereof, as he may think proper, into a separate district, and appoint a collector, to reside at such port of entry and delivery, as may be established by the President within the same.

Districts and
ports in New
Jersey.

Sec. 7. *And be it further enacted*, That in the state of New Jersey, there shall be five districts, to wit: Perth Amboy, Burlington, Bridgetown, Great Egg Harbor and Little Egg Harbor, which shall severally be ports of entry. The district of Perth Amboy shall comprehend all that part of the state of New Jersey, known by the name of East New Jersey (that part excepted which is hereafter included in the district of Little Egg Harbor), together with all the waters thereof, heretofore within the jurisdiction of the said state; in which district the towns, or landing places of New Brunswick, Middletown Point, Elizabethtown and Newark, shall be ports of delivery only; and a collector for the district shall be appointed, to reside at Perth Amboy, and a surveyor, to reside at New Brunswick.

The district of Burlington shall comprehend that part of the said state known by the name of West New Jersey, which lies to the eastward and northward of the county of Gloucester, with all the waters thereof heretofore within the jurisdiction of the said state, in which district the landing place of Lamberton shall be a port of delivery only; and a collector shall be appointed for the district, to reside at Burlington, which shall be the port of entry for the district.

The district of Bridgetown shall comprehend the counties of Gloucester, Salem, Cumberland and Cape May (such parts of the county of Gloucester and Cape May as shall be herein after included in the district of Great Egg Harbor, excepted), and all the waters thereof heretofore within the jurisdiction of the said state; and the town of Salem and Port Elizabeth on Maurice river shall be ports of delivery only; and a collector for the district shall be appointed, to reside at Bridgetown, which shall be the port of entry for the district.

The district of Great Egg Harbor shall comprehend the river of Great Egg Harbor, together with all the inlets, bays, sounds, rivers and creeks, along the sea-coast, from Brigantine Inlet to Cape May; and a collector for the district shall be appointed, to reside at Somers Point, on the said river of Great Egg Harbor.

The district of Little Egg Harbor shall comprehend all the shores, waters, bays, rivers and creeks from Barnegat Inlet to Brigantine Inlet, both inclusively; and the town of Tuckerton shall be the sole port of entry for the said district; and a collector for the same shall be appointed, to reside at Tuckerton.

Districts and
ports in Penn-
sylvania.

Sec. 8. *And be it further enacted*, That in the state of Pennsylvania, there shall be two districts, to wit: Philadelphia, and Presque Isle. The district of Philadelphia shall include all the shores and waters of the river Delaware, and the rivers and waters connected therewith, lying within the state of Pennsylvania; and the city of Philadelphia shall be the sole port of entry and delivery for the same; and a collector, naval officer and surveyor for the district shall be appointed, who shall reside at the city of Philadelphia.

The district of Presque Isle shall include all the shores and waters of Lake Erie, and the rivers and waters connected therewith, lying within the jurisdiction of the United States and the state of Pennsyl-



vania; and a collector for the said district shall be appointed, who shall reside at Presque Isle.

SEC. 9. *And be it further enacted*, That the state of Delaware shall be one district, and the borough of Wilmington shall be the only port of entry, to which shall be annexed, New Castle and Port Penn, as ports of delivery only; and a collector for the district shall be appointed, to reside at the said port of Wilmington.

District and
ports in Dela-
ware.

SEC. 10. *And be it further enacted*, That in the state of Maryland there shall be ten districts, to wit: Baltimore, Chester, Oxford, Vienna, Snowhill, Annapolis, Nottingham, Nanjemoy, Georgetown and Havre-de-Grace.

Districts and
ports in Mary-
land.

The district of Baltimore shall include Patapsco river, Turkey Point, Spes Utiae Island, and all the waters and shores on the west side of Chesapeake Bay, from the mouth of Magetty river, which shall not be included in the district of Havre-de-Grace; and a collector, naval officer and surveyor for the district shall be appointed, to reside at Baltimore, which shall be the sole port of entry.

The district of Chester shall include Chester river, and all the waters and shores on the eastern side of Chesapeake Bay, from the south side of Elk river, to the north side of the Eastern bay, and Wye river, inclusive; in which Georgetown on Sassafra river, shall be a port of delivery only; and a collector for the district shall be appointed, to reside at Chester, which shall be the sole port of entry.

The district of Oxford shall include all the waters and shores on the eastern side of Chesapeake Bay, from the north side of Wye river, and the Eastern bay, to the south side of Great Choptank river, inclusive; and Cambridge shall be a port of delivery only; and a collector for the district shall be appointed, to reside at Oxford, which shall be the sole port of entry.

The district of Vienna shall include all the waters and shores on the eastern side of Chesapeake Bay from the south side of Great Choptank river, to the south side of Hooper's Straights, Hayne's Point, and Wicomico river, inclusive; and Salisbury shall be a port of delivery only; and a collector for the district shall be appointed, to reside at Vienna, which shall be the sole port of entry.

The district of Snowhill shall include all the waters and shores on the sea-coast, from the north line of Virginia, to the south line of Delaware, together with all the waters and shores on the eastern side of Chesapeake Bay, from the south side of Wicomico river to the south side of Pocomoke river, inclusive, so far as the jurisdiction of the said state of Maryland extends; to which Sinnipuxent shall be a port of delivery for West India produce only; and a collector for the district shall be appointed, to reside at Snowhill, which shall be the sole port of entry.

The district of Annapolis shall include Magetty river, and all the waters and shores from thence to Drum Point on Patuxent river; and a collector for the district shall be appointed, to reside at Annapolis, which shall be the sole port of entry and delivery for the same.

The district of Nottingham shall include all the waters and shores on the west side of Chesapeake Bay, to Drum Point, on the river Patuxent, together with the said river, and all the navigable waters emptying into the same, to which Benedick, Lower Marlborough, Town Creek, and Sylvey's Landing, shall be annexed as ports of delivery only; and a collector for the district shall be appointed, to reside at Nottingham, and a surveyor at Town Creek; and Nottingham shall be the sole port of entry.

The district of Nanjemoy shall include all the waters of the Potomac within the jurisdiction of the state of Maryland, from Point-look-out to Pomonky creek inclusive, to which Cedar Point, Saint Mary's and



Districts and
ports in Mary-
land.

Lewellensburgh shall be annexed as ports of delivery only; and a collector for the district shall be appointed, to reside at Nanjemoy; also a surveyor, to reside at each of the towns of St. Mary's and Lewellensburgh; and Nanjemoy shall be the sole port of entry.

1802, ch. 45, § 9.

The district of Georgetown shall include all the waters and shores from Pomonky creek on the north side of Potomac river, to the head of the navigable waters of the said river, within the jurisdiction of the state of Maryland, to which Digges's Landing and Carrolsburg shall be annexed as ports of delivery only; and a collector for the district shall be appointed, to reside at Georgetown, which shall be the sole port of entry.

The district of Havre-de-Grace shall include all the waters and shores of the Chesapeake Bay, above Turkey Point and Spes Utia Island to the south side of Elk river, inclusive; and a collector for the district shall be appointed, to reside at Havre-de-Grace, which shall be the sole port of entry for the same.

Districts and
ports in Vir-
ginia.

SEC. 11. *And be it further enacted*, That in the state of Virginia there shall be eleven districts, to wit: Hampton, as one port, Norfolk and Portsmouth, as one port, Bermuda Hundred and City Point, as one port, Yorktown, Tappahannock, Yeocomico river, including Kinsale, Dumfries, including Newport, Alexandria, Folly Landing, Cherrystone and South Quay. The authority of the officers at Hampton shall extend over all the waters, shores, bays, harbors and inlets between the south side of the mouth of York river, along the west shore of Chesapeake Bay, to Hampton, and thence up the northern side of James river, to the east side of Chickahominy river; and a collector for the district shall be appointed, to reside at Hampton, which shall be the sole port of entry.

To the district of Norfolk and Portsmouth shall be annexed Suffolk and Smithfield, as ports of delivery only: and the authority of the officers of the district shall extend over all the waters, shores, bays, harbors and inlets, comprehended within a line drawn from Cape Henry to the mouth of James river, and thence up the south side of James river to Hood's, inclusively, and up Elizabeth river to the highest tide water thereof; and Norfolk and Portsmouth shall be the sole port of entry; and a collector, naval officer and surveyor for the district shall be appointed, to reside at Norfolk; also a surveyor, to reside at each of the ports of Suffolk and Smithfield.

To the district of Bermuda Hundred, or City Point, shall be annexed Richmond, Petersburg and Manchester, as ports of delivery only; and a collector and surveyor shall be appointed for the said district, to reside at Bermuda Hundred, or City Point, which shall be the sole port of entry; also a surveyor for Petersburg, to reside thereat; and a surveyor for Richmond and Manchester, to reside at Richmond; and the authority of the officers of the said district shall extend over all the waters, shores, bays, harbors and inlets, comprehended between Hood's, on the southern side of James river, and the highest tide water on James and Appamatox rivers, and on the northern side of James river from the highest tide water to the eastern bank of Chickahominy river.

To the district of Yorktown shall be annexed West Point and Cumberland as ports of delivery only; and a collector for the district shall be appointed, to reside at Yorktown, which shall be the sole port of entry; also a surveyor for the two ports of delivery, to reside at West Point; and the authority of the officers of the said district shall extend over all the waters, shores, bays, harbors and inlets comprehended between the point forming the south shore of the mouth of Rappahannock river, and the point forming the south shore of the mouth of York river, and thence up the said river to West Point, and thence up Pamunkey and Mattaponi rivers to the highest navigable waters thereof.



Districts and
ports in Vir-
ginia.

To the district of Tappahannock shall be annexed Urbanna, Port Royal and Fredericksburg, (including Falmouth) as ports of delivery only; and a collector for the district shall be appointed, to reside at Tappahannock, which shall be the sole port of entry; also a surveyor for each of the ports of Urbanna, Port Royal and Fredericksburg; and the authority of the officers of the said district shall extend over all the waters, shores, harbors, bays and inlets comprehended between Smith's Point at the mouth of the Potomac river, and the point forming the south shore of the mouth of Rappahannock river, and thence up the last mentioned river to the highest tide water thereof.

The district of Yeocomico river, including Kinsale, shall extend from Smith's Point, on the south side of Potomac river, to Boyd's Hole, on the same river, including all the waters, shores, bays, harbors, creeks and inlets, along the south shore of Potomac river to Boyd's Hole aforesaid; and Yeocomico, including Kinsale, shall be the sole port of entry; and a collector for the district shall be appointed, to reside on Yeocomico river.

The district of Dumfries, including Newport, shall extend from Boyd's Hole to Cockpit Point, on the south side of Potomac river; and a collector for the district shall be appointed, to reside at Dumfries, which shall be the sole port of entry; and the authority of the officers of this district shall extend over all the waters, shores, bays, harbors, creeks and inlets, comprehended between Boyd's Hole and Cockpit Point aforesaid.

For the district of Alexandria shall be appointed a collector and surveyor, to reside at Alexandria, which shall be the sole port of entry; and the authority of the officers of the said district shall extend over all the waters, shores, bays, harbors, creeks and inlets on the south side of the river Potomac, from the last mentioned Cockpit Point to the highest tide water of the said river.

For the district of Folly Landing shall be appointed a collector, who shall reside at Accomack Courthouse, and whose authority shall extend over all the waters, shores, bays, harbors and inlets of the county of Accomack.

For the district of Cherrystone shall be appointed a collector, to reside at Cherrystone, whose authority shall extend over all the waters, shores, bays, harbors and inlets comprehended within Northampton county.

For the district of South Quay a collector shall be appointed, to reside thereat, whose authority shall extend over all the waters, shores, bays, harbors and inlets in that part of the state of Virginia to the southward of the district of Norfolk, and not included in said district, comprehended within the limits of the said state.

Sec. 12. *And be it further enacted*, That in the state of North Carolina there shall be five districts, to wit: one, to be called the district of Wilmington, and to comprehend all the waters, shores, bays, harbors, creeks and inlets from Little River inlet inclusive, to New River inlet inclusive. The town of Wilmington shall be a port of entry and delivery, and there shall be a collector, naval officer and surveyor, to reside at the said town of Wilmington. Another district, to be called the district of Newbern, which shall comprehend all the waters, shores, bays, harbors, creeks and inlets from New River inlet inclusive, to Ocracoke inlet inclusive, together with that part of Pampticoe Sound, which lies southward and westward of the shoal projecting from the mouth of Pampticoe river, towards the Royal Shoal, and southward of the said Royal Shoal; that the town of Newbern shall be a port of entry and delivery, and the towns of Beaufort and Swansborough shall be ports of delivery only; and there shall be a collector appointed for the district, to reside at Newbern, and a surveyor, to reside at Beaufort, and one at Swansborough. And it shall be lawful for the President of the United States, if he shall

Districts and
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judge it expedient, and for the interest of the United States, to establish a port of delivery at Shell Castle or Beacon Island, near Ocracoke Inlet, and to appoint a surveyor to reside thereat. Another district, to be called the district of Washington, which shall comprehend all that part of Pampticoe Sound, not included in the district of Newbern as far north as the Marshes; the town of Washington shall be the sole port of entry and delivery; and a collector for the district shall be appointed, to reside within the same. Another district, which shall be called the district of Edenton, and to comprehend all the waters, bays, harbors, creeks and inlets from the Marshes inclusive, northward and westward, except those included in the district of Cambden. The town of Edenton shall be a port of entry and delivery, and Hertford, Murfreesborough, Princeton, Winton, Bennet's Creek, Plymouth, Windsor and Skewarky, ports of delivery; and a collector for the district shall be appointed, to reside at the town of Edenton, and a surveyor at each of the ports of Hertford, Winton, Bennet's Creek, Plymouth, Windsor and Skewarky; and one at Murfreesborough, for said port and for Princeton. Another district, which shall be called the district of Cambden, and to comprehend North River, Pasquotank and Little rivers, and all the waters, shores, bays, harbors, creeks and inlets from the junction of Currituck and Albermarle Sounds, to the north extremity of Blackbay; and Plankbridge, on Sawyer's creek, shall be the ports of entry and delivery, and Nixonton, Indian Town, Newbiggin Creek, Currituck Inlet, Pasquotank River Bridge, ports of delivery; and a collector for the district shall be appointed, to reside at Plankbridge, on Sawyer's creek, and a surveyor at each of the ports of Nixonton, Indian Town, Currituck Inlet, Pasquotank River Bridge and Newbiggin Creek; and that the authority of the several officers of each district shall extend over all the waters, shores, bays, harbors, creeks and inlets, comprehended within each district. Provided that all ships or vessels, intending to proceed to Plymouth, Windsor, Skewarky, Winton, Bennet's Creek Bridge, Murfreesborough or Princeton, shall first come to and enter at the port of Edenton; and provided also, that any vessels coming in at Ocracoke Inlet, that may be under the necessity of employing lighters before they pass the Royal Shoal, may be at liberty to enter at any port of entry connected with the waters of said inlet, to which such vessels are bound; and that any vessel coming in at said inlet in ballast, for the purpose of loading without the Royal Shoals, shall be at liberty to enter at any port of entry connected with the waters of said inlet.

Districts and
ports in South
Carolina.

SEC. 13. *And be it further enacted*, That in the state of South Carolina there shall be three districts, to wit: Georgetown, Charleston and Beaufort, each of which shall be a port of entry. The district of Georgetown shall include the shores, inlets and rivers, from the boundary of North Carolina to the point of Cape Romain. The district of Charleston shall include all the shores, inlets and rivers, from Cape Romain to Combahee river, inclusive; and the district of Beaufort shall include the shores, inlets and rivers, from Combahee river to Back river in Georgia, comprehending all the shores, inlets and harbors, formed by the different bars and sea islands lying within each district respectively; and a collector, naval officer and surveyor shall be appointed, to reside at Charleston, and a collector at each of the other ports.

Districts and
ports in Georgia.

SEC. 14. *And be it further enacted*, That in the state of Georgia there shall be five districts, to wit: Savannah, Sunbury, Brunswick, St. Mary's and Hardwicke; each of which shall be a port of entry. The district of Savannah shall include Savannah river, and all the waters, shores, harbors, rivers, creeks, bays and inlets, from the said river to the north point of Ossabaw island and Great Ogeeche rivers, inclusive; and a collector, naval officer and surveyor shall be appointed for the said district, to reside at Savannah.



The district of Sunbury shall comprehend all the waters, shores, harbors, rivers, creeks, bays and inlets, south of the north point of Ossabaw island and Great Ogeeche river exclusive, and north of the south point of Sapelo island inclusive, except such part as is hereafter described as appertaining to the district of Hardwicke; and a collector for the said district shall be appointed, to reside at Sunbury.

Districts and
ports in Geor-
gia.

The district of Brunswick shall comprehend all the waters, shores, harbors, rivers, creeks, bays and inlets, from the south point of Sapelo island exclusive, to the south point of Jekyll island inclusive; Fredericka shall be a port of delivery only; and a collector for the district shall be appointed, to reside at Brunswick.

The district of St. Mary's shall comprehend all the waters, shores, harbors, rivers, creeks, bays and inlets, from the south point of Jekyll island exclusive to St. Mary's river inclusive; and a collector for the said district shall be appointed, to reside at St. Mary's.

And in each of the said districts it shall be lawful for the collector to grant a permit to unlade at any port or place within the district, and to appoint, or put on board any ship or vessel for which a permit is granted, one or more inspectors, as may be necessary for the security of the revenue.

The district of Hardwicke shall include all the waters, shores, bays, harbors, creeks and rivers, between the south point of Ossabaw island and the south point of Warsaw island; and in the said district the town of Hardwicke shall be the only point of entry, and a collector for the said district shall be appointed, to reside at Hardwicke.

SEC. 15. *And be it further enacted*, That in the state of Kentucky there shall be one district, which shall include all the waters, shores and inlets of the rivers Ohio and Mississippi, and the rivers and waters connected therewith lying within the jurisdiction of the United States and the said state; and a collector shall be appointed, to reside at Louisville, which shall be the sole port of entry and delivery, for the said district, of any goods, wares and merchandise, not the growth or manufacture of the United States: *Provided nevertheless*, that it shall be lawful for the President of the United States, whenever he shall judge it expedient, and for the interest of the United States, to establish a separate district, which shall include all the waters, shores and inlets of the river Mississippi, within the jurisdiction of the United States and the said state of Kentucky, and also the shores and waters on the south side of the river Ohio, from the mouth thereof to the east bank of Cumberland river, with the rivers and waters connected with the Mississippi and Ohio, within the limits aforesaid, and within the state aforesaid; and to appoint a collector to reside at such port of entry and delivery as may be established within the same.

Districts and
ports in Ken-
tucky.

SEC. 16. *And be it further enacted*, That in the state of Tennessee there shall be one district, which shall include all the waters, shores and inlets of the river Mississippi, and other navigable rivers and waters lying within the jurisdiction of the United States, and within the said state; and a collector shall be appointed, who shall reside at Palmyra, which shall be the only port of entry or delivery, within the said district, of any goods, wares and merchandise not the growth or manufacture of the United States: *Provided nevertheless*, that the President of the United States may, whenever he shall judge it expedient, and for the interest of the United States, erect the shores, waters and inlets of the river Mississippi lying within the jurisdiction of the United States, and within the state of Tennessee, into a separate district, and appoint a collector, to reside at such port of entry and delivery as may be established within the same.

Districts and
ports in Ten-
nessee.

1801, ch. 17.

SEC. 17. *And be it further enacted*, That in the territory of the United

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Districts and
ports in the N.
Western Terri-
tory.

States northwest of the river Ohio, there shall be six districts, to wit: Erie, Detroit, Michilimakinac, Massac, Illinois and Ohio.

The district of Erie shall include all the waters, shores and inlets of Lake Erie, within the jurisdiction of the United States, and the rivers and waters connected therewith, from the west line of the state of Pennsylvania unto the west bank of the Miami of Lake Erie, including said river; and the President of the United States is authorized to establish such place at or near Sandusky, or on the said river Miami, to be the port of entry, as he shall judge expedient, and also to establish not exceeding two other places to be ports of delivery only; and a collector shall be appointed, to reside at the port of entry, and surveyors to reside at such ports of delivery as may be established as aforesaid.

The district of Detroit shall include all the waters, shores and inlets of the lakes Erie, St. Clair and Huron, within the jurisdiction of the United States, and the rivers and waters connected therewith, to the westward of the river Miami aforesaid, unto the island of Michilimakinac; and a collector shall be appointed, to reside at Detroit, which shall be the sole port of entry for the district; and the President of the United States is authorized, if he shall judge it expedient, to establish not exceeding two ports of delivery within the said district, and to appoint surveyors to reside thereat.

The district of Michilimakinac shall include the island of that name, the adjoining lands ceded to the United States by the Indian nations at the treaty of Greenville, and all the waters, shores and inlets to the westward and northward of the lakes Michigan and Superior, and the rivers, waters, shores and lakes connected therewith, lying within the jurisdiction of the United States, unto the northern and northwestern boundaries thereof. And the President of the United States is authorized to establish such place at or near Michilimakinac to be the port of entry for the district as he shall deem expedient, and also to establish not exceeding three other places within the said district to be ports of delivery only; and a collector shall be appointed to reside at the port of entry, and surveyors to reside at the ports of delivery, which may be established as aforesaid.

The district of Massac shall include the lands relinquished and ceded to the United States by the Indian nations, at the treaty of Greenville in August, one thousand seven hundred and ninety-five, lying near the confluence of the rivers Ohio and Mississippi, and shall extend from thence to the mouth of the river Ohio, on the northern side of the said river, and up the river Ohio to the eastern side of the river Wabash, including the said river, with all the waters, shores and inlets connected with the rivers Ohio and Wabash, within the boundaries aforesaid. And such place at or near Fort Massac as the President of the United States shall designate for that purpose, shall be the sole port of entry for the district; and a collector shall be appointed, to reside thereat; and it shall be lawful for the President of the United States, if he shall judge expedient, to establish not exceeding two places at or near the river Wabash to be ports of delivery only, and to appoint surveyors to reside thereat.

The district of Illinois shall include all the waters, shores and inlets of the river Mississippi above the mouth of the river Ohio, within the jurisdiction of the United States, and also the river Illinois, with the rivers, shores and waters connected therewith; and a collector shall be appointed to reside at such place as the President of the United States shall designate, to be the port of entry, and not exceeding two surveyors to reside at such places as the President shall see fit to establish as ports of delivery only.

The district of Ohio shall include all the waters, shores and inlets of the river Ohio, on the northern side, with the rivers, shores and waters



connected therewith, lying to the eastward of the district of Massac as before described; and a collector shall be appointed to reside at such place as the President of the United States shall designate, at or near the confluence of the Great Miami river and the river Ohio, which place shall be the sole port of entry or delivery for the district.

And there shall be a district on the river Mississippi, south of the state of Tennessee, which shall include all the waters, shores and inlets of the river Mississippi, and other navigable rivers and waters connected therewith, lying within the jurisdiction of the United States and south of the said state; and it shall be lawful for the President of the United States, to designate a proper place, to be the port of entry and delivery within the same, and to appoint a collector to reside thereat.

And in case the appointment of the several collectors and surveyors for the new districts or ports established, or authorized to be established hereby, shall not be made during the present session of Congress, the President of the United States may, and he is hereby empowered, to make such appointments during the recess of the Senate, by granting commissions, which shall expire at the end of their next session; but new appointments shall not be necessary to be made to any of the offices heretofore established.

SEC. 18. *And be it further enacted*, That it shall and *may be* lawful to make entry of any ship or vessel, which shall arrive from any foreign port or place within the United States, or of the cargo on board such ship or vessel, elsewhere than at one of the ports of entry herein before established, nor to unlade the said cargo, or any part thereof, elsewhere than at one of the ports of delivery herein established. *(a) Provided always*, that every port of entry shall be also a port of delivery: *And provided further*, that none but ships or vessels of the United States shall be admitted to unlade at any other than the ports following, to wit: Portsmouth, in New Hampshire; Portland and Falmouth, New Bedford, Dighton, Salem and Beverly, Gloucester, Newburyport, Marblehead, Nantucket, Boston and Charlestown, Plymouth, Bath, Frenchman's bay, Wiscasset, Machias and Penobscot, in the state of Massachusetts; Newport and Providence, in the state of Rhode Island and Providence Plantations; New London and New Haven, in the state of Connecticut; New York, in the state of New York; Perth Amboy and Burlington, in the state of New Jersey; Philadelphia, in the state of Pennsylvania; Wilmington, New Castle and Port Penn, in the state of Delaware; Baltimore, Annapolis, Vienna, Oxford, Georgetown, on Potomac, Chestertown, Town Creek, Nottingham, Nanjemoy, Digges's Landing, Snowhill and Carrolsburgh, in the state of Maryland; Alexandria, Kinsale, Newport, Tappahannock, Port Royal, Fredericksburg, Urbanna, Yorktown, West Point, Hampton, Bermuda Hundred, City Point, Rockett's Landing, Norfolk and Portsmouth, in the state of Virginia; Wilmington, Newbern, Beaufort, Washington, Edenton and Plankbridge, in the state of North Carolina; Charleston, Georgetown and Beaufort, in the state of South Carolina; and in either of the ports of Savannah, Sunbury, Brunswick, Fredericks and St. Mary's, in the state of Georgia; or to make entry in any other district than in the one in which they shall be so admitted to unlade. *And provided lastly*, that no ship or vessel arriving from the Cape of Good Hope, or from any place beyond the same, shall be admitted to make entry at any other than the ports following, to wit: Portsmouth, in the state of New Hampshire; Boston and Charlestown, Newburyport, Salem and Beverly, Marblehead, Gloucester, Portland and Falmouth, in the state of Massachusetts; Newport and Providence, in the state of Rhode Island and Providence Plantations; New London and New Haven, in the state of Connecticut; New York, in the state of New York; Perth Amboy, in the state of New Jersey; Philadelphia, in the state of Pennsylvania;

Districts and ports in the N. Western Territory.

District and port south of Tennessee.

Appointments may be made in the recess of Congress.

Where vessels and cargoes are to be entered and delivered.

Ports of entry to be ports of delivery.

Ports to which the unlading of vessels of the U. States is restricted.

(a) This is an error in the original roll. *Not lawful* is intended.—Ed.

Proviso.

Port of Shell
Castle or Bea-
con Island, and
duties of the
officer of the
port.

Wilmington, in the state of Delaware; Baltimore, Annapolis and Georgetown, in the state of Maryland; Alexandria, Norfolk and Portsmouth, in the state of Virginia; Wilmington, Newbern, Washington and Edenton, in the state of North Carolina; Charleston, Georgetown and Beaufort, in the state of South Carolina; and Sunbury and Savannah, in the state of Georgia. *Provided*, that nothing herein contained shall prevent the master or commander of any ship or vessel from making entry with the collector of any district in which such ship or vessel may be owned, or from which she may have sailed on the voyage from which she shall then have returned. *Provided also*, that if the President of the United States shall see fit to establish a port of delivery at Shell Castle, or Beacon Island, near Ocracoke Inlet, and to appoint a surveyor to reside thereat, it shall be the duty of the master or commander of every ship or vessel coming in at Ocracoke Inlet, and intending to unlade her cargo, or any part thereof, at any port connected with the waters of the said inlet, to come to at the port of delivery which may be established as aforesaid, and there exhibit like reports and manifests, and perform all other duties required by this act of masters of vessels when arriving at a port of entry in the United States; but no duties shall be paid or secured at the said port of delivery; and the surveyor who may be appointed to reside at the said port of delivery shall, in addition to other powers and duties granted and prescribed to surveyors by this act, superintend the unlading and discharge of all goods, wares and merchandise from the vessels in which the same may be imported, into the lighters or coasting vessels, which may be employed in the transportation of said goods, wares and merchandise to any port of entry or delivery connected with the said Ocracoke Inlet; and all goods, wares or merchandise which shall be so unladed into lighters or coasting vessels, shall and may be secured with the necessary locks, or fastenings, or under the seal of the said surveyor, and shall be accompanied with permits, describing the said goods, wares and merchandise, the vessel in which imported, the persons to whom belonging, and the port of entry or delivery to which destined. And the masters or commanders of all lighters or coasting vessels who shall receive goods, wares or merchandise to be transported as aforesaid, shall give triplicate receipts describing the casks or packages, containing the same; and in case any goods, wares or merchandise, transported under permits and for which receipts shall have been given as aforesaid, shall not be transported and delivered to the collector or surveyor of the port of entry or delivery, to which the same shall be consigned by the permits aforesaid, the dangers of the seas and unavoidable accidents only excepted, or if any lock, fastening or seal placed on the said goods, wares or merchandise, shall be broken or destroyed, the lighter or vessel employed in transporting the same shall be forfeited, and the master thereof shall forfeit and pay a sum not exceeding five hundred dollars, with costs of suit. And it shall be the duty of the surveyor, who may be appointed to reside at the port of Shell Castle, or Beacon Island, to endorse on the original manifests of vessels arriving at said port, all deliveries which may be made as aforesaid to the masters of lighters or coasting vessels as aforesaid; which manifests shall be exhibited to the collector of the interior port of entry, to which such vessels may be destined, where like entries shall be made and like proceedings had, as are required by the general regulations and provisions of this act.

Vessels bound
to certain ports
of delivery shall
first come to at
the port of en-
try, and excep-
tions.

Sec. 19. *And be it further enacted*, That the master or commander of every ship or vessel bound to a port of delivery only, in any of the following districts, to wit: Portland and Falmouth, except the ports of North Yarmouth, Freeport and Harpswell; Bath, except the ports of Georgetown and Brunswick; Newburyport, New London, except the port of Stonington; Middletown, except the ports of Lyme, Saybrook,



Killinsworth, Haddam, and East Haddam; Norfolk and Portsmouth, Bermuda Hundred or City Point, Yorktown, Tappahannock, except the port of Urbanna, or Edenton; shall first come to, at the port of entry of such district, with his ship or vessel, and there make report and entry in writing, and pay, or secure to be paid, all legal duties, port fees and charges, in manner provided by this act, before such ship or vessel shall proceed to her port of delivery; and that any ship or vessel bound to a port of delivery in any district other than those above mentioned, or to either of the ports of delivery above mentioned, may first proceed to her port of delivery, and afterwards make report and entry within the time by this act limited; and the master of every vessel arriving from a foreign port, or having goods on board, of which the duties have not been paid or secured, and bound to any port on Connecticut river, shall take an inspector on board at Saybrook, before proceeding to such port; and if any master of a ship or vessel shall proceed to a port of delivery, contrary to the directions aforesaid, he shall forfeit and pay five hundred dollars, to be recovered with costs of suit; that the master or commander of any ship or vessel, bound to any district in Connecticut, through or by the way of Sandy Hook, shall, before he pass by the port of New York, and immediately after his arrival, deposit with the collector for the district of New York, a true manifest of the cargo on board such ship or vessel; if bound to the district of Hudson, shall, before he pass by the port of New York, and immediately after his arrival, deposit with the collector thereof a like manifest; if bound to the district of Burlington, shall, before he pass by the port of Philadelphia, and immediately after his arrival, deposit with the collector thereof a like manifest; if bound to the district of Nottingham, shall, before he pass by the port of Town Creek, and immediately after his arrival, deposit with the surveyor of the said port a like manifest; if bound to the district of Tappahannock, shall, before he pass by the port of Urbanna, and immediately after his arrival, deposit with the surveyor of that port a like manifest; if bound to the district of Bermuda Hundred and City Point, shall, on his arrival in Hampton Road, or at Sewell's Point, and immediately after such arrival, deposit with the collector of Norfolk and Portsmouth, or with the collector of the port of Hampton, a like manifest; and if bound to the district of South Quay, shall, before he pass by the port of Edenton, and immediately after his arrival, deposit with the collector of the port of Edenton a like manifest; and the said collectors and surveyors respectively shall, after registering the manifests, transmit the same, duly certified to have been so deposited, to the officer with whom the entries are to be made; and the said collectors and surveyors respectively, may, whenever they judge it to be necessary for the security of the revenue, put an inspector of the customs on board any ship or vessel as aforesaid, to accompany the same until her arrival at the first port of entry or delivery, in the district to which such ship or vessel may be destined; and if the master or commander of any ship or vessel shall neglect or omit to deposit a manifest in manner aforesaid, or shall refuse to receive an inspector of the customs on board, as the case shall require, he shall forfeit and pay five hundred dollars, to be recovered with costs of suit, one half for the use of the officer with whom such manifest ought to have been deposited, and the other half to the use of the collector of the district to which the said ship or vessel may be bound: *Provided*, that if the manifest shall, in either of the above cases, have been previously delivered to any officer of the customs, pursuant to the provisions hereinafter to be made in that behalf, the depositing of a manifest as aforesaid shall not be necessary.

Vessels bound to certain ports of delivery shall first come to at the port of entry, and exceptions.

SEC. 20. *And be it further enacted*, That all officers and persons to be appointed pursuant to this act, before they enter upon the duties of their respective offices, shall severally take and subscribe an oath or

Officers appointed under this act to take an oath, and

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transmit it to
the Comptroller.

affirmation, diligently and faithfully to execute the duties of their said offices respectively, which oath or affirmation shall be of the form and tenor following, to wit:

I (A. B.) having been appointed (collector or other officer as the case may be) of the (district or port of) do solemnly, sincerely and truly (swear or affirm) that I will diligently and faithfully execute the duties of the said office of and will use the best of my endeavours to prevent and detect frauds in relation to the duties imposed by the laws of the United States; I further (swear or affirm) that I will support the constitution of the United States.

(Sworn or affirmed) and subscribed, this day of before me,

Penalty in de-
fault thereof.

And the oath or affirmation aforesaid, if taken by a collector, may be taken before any magistrate authorized to administer oaths within the district to which he belongs; but if taken by another officer, shall be taken before the collector of his district; and being certified under the hand and seal of the person by whom the same shall have been administered, shall within three months thereafter be transmitted to the comptroller of the treasury, in default of taking of which oath, or transmitting a certificate thereof, the party failing shall forfeit and pay two hundred dollars, to be recovered with cost of suit in any court of competent jurisdiction, to the use of the United States.

Duties of the
collector.

SEC. 21. *And be it further enacted*, That the several officers of the customs shall respectively perform the duties following, to wit: At such of the ports to which there shall be appointed a collector, naval officer and surveyor, the collector shall receive all reports, manifests and documents to be made or exhibited on the entry of any ship or vessel, according to the regulations of this act; shall record, in books to be kept for that purpose, all manifests; shall receive the entries of all ships or vessels and of the goods, wares and merchandise imported in them; shall, together with the naval officer where there is one, or alone where there is none, estimate the amount of the duties payable thereupon, endorsing the said amount upon the respective entries; shall receive all monies paid for duties, and take all bonds for securing the payment thereof; shall grant all permits for the unlading and delivery of goods; shall, with the approbation of the principal officer of the treasury department, employ proper persons as weighers, gaugers, measurers and inspectors, at the several ports within his district; and also, with the like approbation, provide, at the public expense, storehouses for the safe keeping of goods, and such scales, weights and measures, as may be necessary; the naval officer shall receive copies of all manifests and entries, and shall, together with the collector, estimate the duties on all goods, wares and merchandise subject to duty (and no duties shall be received without such estimate), and shall keep a separate record thereof, and shall countersign all permits, clearances, certificates, debentures, and other documents, to be granted by the collector; he shall also examine the collector's abstracts of duties, and other accounts of receipts, bonds and expenditures, and if found right, he shall certify the same.

Duties of the
naval officer.

Duties of the
surveyor.

The surveyor shall superintend and direct all inspectors, weighers, measurers and gaugers, within his port, and shall once every week report to the collector, the name or names of such inspectors, weighers, gaugers or measurers, as may be absent from or neglect to do their duty, shall visit or inspect the ships or vessels which arrive therein, and shall make a return in writing every morning to the collector, if any, at the port where he resides, of all vessels which shall have arrived from foreign ports or places the preceding day, specifying the names and denominations of the vessels, the masters' names, from whence arrived, whether laden or in ballast, whether belonging to the United States, or to what other nation belonging, and if American vessels, whether the masters



thereof have or have not complied with the law, in having the required number of manifests of the cargo on board, agreeing in substance with the provisions made necessary by this act, and shall have power, and is hereby required, to put on board each of such vessels, one or more inspectors, immediately after their arrival in his port; the surveyor shall also ascertain the proof, quantities and kinds of distilled spirits imported, rating such spirits according to their respective degrees of proof as defined by the laws imposing duties on spirits: he shall likewise examine and ascertain the quality, kind and quantity of all wines imported; also the quantity and kind of all teas and sugars imported; and shall grant certificates for the said spirits, wines and teas, and make returns thereof, in manner hereafter provided. He shall also examine whether the goods imported in any ship or vessel, and the deliveries thereof, agreeably to the inspector's returns thereof, correspond with the permits for landing the same; and if any error or disagreement appear, he shall report the same to the collector, and to the naval officer, if any there be. The surveyor shall also superintend the lading for exportation of all goods entered for the benefit of any drawback, bounty or allowance, and shall examine and report whether the kind, quantity and quality of the goods, so laden on board any vessel for exportation, correspond with the entries and permits granted therefor: he shall also from time to time, and particularly on the first Mondays in January and July in each year, examine and try the weights, measures and other instruments, used in ascertaining the duties on imports, with standards to be provided by each collector at the public expense for that purpose; and where disagreements or errors are discovered, he shall report the same to the collector, and obey and execute such directions as he may receive for correcting thereof, agreeably to the standards aforesaid; and the said surveyor shall in all cases be subject to the direction of the collector. And at ports to which a collector and surveyor only are assigned, the said collector shall solely execute all the duties in which the co-operation of the naval officer is requisite, at the ports where a naval officer is appointed; which he shall also do in case of the disability or death of the naval officer, until a successor is appointed, unless there is a deputy duly authorized under the hand and seal of the naval officer, who in that case shall continue to act, until an appointment shall take place. And at the ports to which a collector only is assigned, such collector shall solely execute all the duties in which the co-operation of the naval officer is requisite as aforesaid, and shall also, as far as may be, perform all the duties prescribed to the surveyors at the ports where such officers are established. And at the ports to which surveyors only are assigned, every such surveyor shall perform all the duties herein before enjoined upon surveyors; and shall also receive and record the copies of all manifests which shall be transmitted to him by the collector: shall record all permits granted by such collector, distinguishing the gauge, weight, measure, and quality of the goods specified therein, and shall take care that no goods be unladen or delivered from any ship or vessel, without a proper permit for that purpose. And at such ports of delivery only to which no surveyor is assigned, it shall be lawful for the collector of the district occasionally, and from time to time, to employ a proper person or persons to do the duties of a surveyor, who shall be entitled to the like compensation with inspectors during the time they shall be employed. And the said collectors, naval officers and surveyors, shall respectively attend in person at the ports to which they are respectively assigned; and shall keep fair and true accounts and records of all their transactions, as officers of the customs, in such manner and form as may from time to time be directed by the proper department, or officer having the superintendence of the collection of the revenue of the United States; and shall at all times submit their books, papers and accounts, to the inspection of such per-

Duties of the surveyor.

1791, ch. 15.

Further duties
of the collector,
naval officer and
surveyor.

sons as may be appointed for that purpose; and the said collector shall at all times pay to the order of the officer, who shall be authorized to direct the payment thereof, the whole of the monies which they may respectively receive by virtue of this act (such monies as they are otherwise by this act directed to pay only excepted,) and shall, once in every three months, or oftener if they shall be required, transmit their accounts for settlement to the officer or officers whose duty it shall be to make such settlement; and if any collector, naval officer or surveyor, shall omit to keep fair and true accounts as aforesaid, or shall refuse to submit forthwith their books, papers and accounts to inspection as aforesaid; or if any collector shall omit or refuse to render his accounts for settlement, for a term exceeding three months after the same shall have been required by the proper officer, in each and every such case the delinquent officer shall forfeit and pay, for the use of the United States, one thousand dollars, to be recovered with costs of suit.

Collectors, &c.,
may appoint de-
puties.

SEC. 22. *And be it further enacted,* That every collector, naval officer and surveyor, in cases of occasional and necessary absence, or of sickness, and not otherwise, may respectively exercise and perform their several functions, powers and duties by deputy, duly constituted under their hands and seals respectively, for whom, in the execution of their trust, they shall respectively be answerable: That in case of the disability or death of a collector, the duties and authorities vested in him shall devolve on his deputy, if any there be at the time of such disability or death, for whose conduct the estate of such disabled or deceased collector shall be liable; and in defect of a deputy, the said authorities and duties shall devolve upon the naval officer of the same district, if any there be; and if there be no naval officer, upon the surveyor of the port appointed for the residence of such disabled or deceased collector, if any there be, and if none, upon the surveyor of the port nearest thereto and within the said district. *And in every case of the disability or death of a surveyor, it shall be lawful for the collector of the district to nominate some fit person to perform his duties and exercise his authorities; and the authorities of the persons who may be empowered to act in the stead of those who may be disabled or dead, shall continue until successors shall be duly appointed, and ready to enter upon the execution of their respective offices.*

Masters of
vessels from for-
eign ports to
have manifests
of the cargoes.

SEC. 23. *And be it further enacted,* That no goods, wares or merchandise, shall be brought into the United States, from any foreign port or place, in any ship or vessel, belonging in the whole or in part to a citizen or citizens, inhabitant or inhabitants of the United States, unless the master or person having the charge or command of such ship or vessel, shall have on board a manifest or manifests in writing, signed by such master or other person, containing the name or names of the port or ports, place or places, where the goods in such manifest or manifests mentioned shall have been respectively taken on board, and the port or ports, place or places within the United States for which the same are respectively consigned or destined, particularly noting the goods, wares and merchandise destined for each port or place respectively, and the name, description and built of such ship or vessel, and the true admeasurement or tonnage thereof, the port or place to which such vessel belongs, with the name or names of each owner, according to the register of the same, together with the name of the master or other person having the charge or command of such ship or vessel, and a just and particular account of all the goods, wares and merchandise, so laden or taken on board, whether in packages or stowed loose, of any kind or nature whatsoever, together with the marks and numbers as marked on each package, and the number or quantity and description of the packages in words at length, whether leaguer, pipe, butt, puncheon, hoghead, barrel, keg, case, bale, pack, truss, chest, box, band-box, bundle,



parcel, cask, or package, of any kind or sort, describing the same by its usual name or denomination; together with the name or names of the person or persons to whom the same are respectively consigned, agreeably to the bills of lading, signed for the same, unless when the said goods are consigned to order, when it shall be so expressed in the said manifest or manifests, together with the name or names of the several passengers on board the said ship or vessel, distinguishing whether cabin or steerage passengers, or both, with their baggage, specifying the number and description of packages belonging to each respectively, together with an account of the remaining sea stores, if any; and the form of a manifest for goods and merchandise imported in a vessel of the United States shall be as follows, to wit:

Report and manifest of the cargo laden on board of the (here insert the denomination and name of the vessel) whereof (insert the master's name) is master, which cargo was taken on board at (here insert the port or ports, place or places at which the cargo was laden) burthen tons, built at in the state of and owned by merchants at (inserting the tonnage, where built, by whom owned, and place or places of residence, as particularly detailed in the certificate of registry) as per register granted at (here insert the port or place) the (here insert the day of the month, and year when granted) and bound for (here insert the name of the port or place where bound to.)

Form of manifest.

Marks.	Number inclusive.	Packages and contents.	By whom shipped.	To whom consigned or if to order.	Place of consignee's residence.	Ports of destination.

Returned cargo.

(If any articles of the outward cargo are brought back, they are to be detailed, specifying by whom shipped outward, and to whom consigned inward.)

Return of passengers and of packages belonging to them respectively.

(Here insert the names of the passengers, and whether cabin or steerage passengers, with the description and number of packages containing their baggage, or the tools or implements of a mechanical trade.)

Vessel and cabin stores.

(Here detail what are remaining.)

And if merchandise shall be imported, destined to be delivered in different districts or ports, the quantities and packages so destined to be delivered, shall be inserted in successive order in the manifest as aforesaid; and all spirits, wines and teas, constituting the whole or any part of the cargo of any vessel, shall also be inserted in successive order, distinguishing the ports to which the same may be destined, and the kinds, qualities and quantities thereof; and if merchandise shall be imported by citizens or inhabitants of the United States, in vessels other than the United States, the manifests shall be of the form, and shall contain the particulars aforesaid, except that said vessels shall be described in manner following, viz:

Report and manifest of the cargo laden on board the (here insert the denomination and name of the vessel and the port to which she belongs) whereof (here insert the master's name, and whether or not master during the voyage) burthen (here insert the nation where built) bound to (here insert the port or ports of destination) which cargo was taken on board at (here insert the port or ports where laden.)



Forfeiture on having on board no manifest, or an imperfect one.

SEC. 24. *And be it further enacted*, That if any goods, wares and merchandise shall be imported or brought into the United States, in any ship or vessel whatever, belonging in the whole or in part to a citizen or citizens, inhabitant or inhabitants of the United States, from any foreign port or place, without having a manifest or manifests on board; agreeably to the directions in the foregoing section, or which shall not be included or described therein, or shall not agree therewith; in every such case the master, or other person having the charge or command of such ship or vessel, shall forfeit and pay a sum of money equal to the value of such goods, not included in such manifest or manifests, and all such merchandise not included in the manifest, belonging or consigned to the master, mate, officers or crew of such ship or vessel, shall be forfeited. *Provided always*, that if it shall be made appear to the satisfaction of the collector, naval officer and surveyor, or to the major part of them, where those officers are established at any port, or to the satisfaction of the collector alone, where either of the other of the said officers are not established, or to the satisfaction of the court in which a trial shall be had concerning such forfeiture, that no part of the cargo of such ship or vessel had been unshipped, after it was taken on board, except such as shall have been particularly specified and accounted for, in the report of the master or other person having the charge or command of such ship or vessel, and that the manifests had been lost or mislaid, without fraud or collusion, or that the same was or were defaced by accident or incorrect by mistake, in every such case the forfeiture aforesaid shall not be incurred.

Duties of masters of vessels in exhibiting manifests.

SEC. 25. *And be it further enacted*, That every master or other person, having the charge or command of any ship or vessel, belonging in the whole or in part to a citizen or citizens, inhabitant or inhabitants of the United States, laden with goods as aforesaid, and bound to any port or place in the United States, shall, on his arrival within four leagues of the coast thereof, or within any of the bays, harbors, ports, rivers, creeks or inlets thereof, upon demand, produce the manifest or manifests in writing, which such master or other person is required as aforesaid to have on board his said ship or vessel, to such officer or officers of the customs, as shall first come on board his said ship or vessel, for his or their inspection, and shall deliver to such officer or officers a true copy or copies thereof (which copy or copies shall be provided and subscribed by the said master or other person having the charge or command of such ship or vessel), and the officer or officers, to whom the original manifest or manifests shall have been so produced, shall respectively certify upon the back thereof, that the same was or were produced, and the day and year on which the same was or were so produced, and that such copy or copies as aforesaid was or were to him or them delivered and by them examined with the original manifest; and shall likewise certify upon the back of such copy or copies the day and year on which the same was or were delivered, and shall forthwith transmit such copy or copies to the respective collectors of the several districts, to which the goods by such manifest or manifests shall appear respectively to be consigned; and that the said master, or other person, so having the charge or command of any such ship or vessel, shall in like manner produce to the officer or officers of the customs who shall first come on board such ship or vessel, upon her arrival within the limits of any district of the United States, in which the cargo, or any part thereof, is intended to be discharged or landed for his or their inspection, such manifest or manifests as aforesaid; and shall also deliver to him or them a true copy or copies thereof (such copy or copies also to be provided and subscribed by the said master or other person having the charge or command of such ship or vessel) the production of which said manifest or manifests, and the delivery of which said copy or copies thereof, shall

Officers of the customs to certify manifests.

also be certified by the said officer or officers of the customs, who shall so first come on board the said ship or vessel, on her arrival within the limits of any such district, upon the back of the said original manifest or manifests, with the particular day and year when such manifest or manifests was or were produced to such officer or officers; and when he or they so received the said copy or copies thereof; and such officer or officers is and are hereby required forthwith to transmit, or cause to be transmitted, the said copy or copies of the said manifest or manifests to the collector of that district; and the said master, or person having the charge or command of the said ship or vessel, shall afterwards produce and deliver the said original manifest or manifests so certified to the said collector; and when any manifest shall be produced, upon which there shall be no certificate from any officer of the customs as before mentioned, the master or commander producing the same shall be required to make oath or affirmation, that no officer has applied for, and that no endorsement has taken place on any manifest of the cargo of such vessel. *Provided always*, that nothing herein contained shall be construed to require of such master, or other person having the charge or command of such ship or vessel, the delivery of more than one copy of each manifest to the officer or officers aforesaid, who shall first come on board of such ship or vessel, within four leagues of the coast of the United States aforesaid, and one other copy to such officer or officers as shall first come on board within the limits of any district, for which the cargo of such ship or vessel, or some part thereof, shall be consigned or destined, or shall be construed to require the delivery of any such copy to any other officer; but it shall be sufficient in respect to any such other officer, to produce and show to him the said original manifest or manifests, and the certificate or certificates thereupon; and the form of the certificate aforesaid, to be endorsed on an original manifest, shall be as follows, to wit:

I (A. B.) certify that the within manifest was this day produced to me as the original manifest of the cargo on board the (insert the denomination and name of the vessel) whereof (insert the name) is master, from (insert the port last from). In witness whereof I have hereunto signed my name, this day of

Form of certificate on an original manifest.

And the form of the certificate aforesaid, to be endorsed on the copy of a manifest, shall be as follows, to wit:

I (A. B.) certify that I have examined the within manifest, produced to me this day as a copy of the original manifest of the cargo on board the (insert the denomination and name of the vessel) whereof (insert the name) is master, from (insert the port last from) with the original, and find the same to agree. In witness whereof I have hereunto signed my name, this day of

On a copy of a manifest.

SEC. 26. *And be it further enacted*, That if the master or other person having the charge or command of any ship or vessel, laden as aforesaid, and bound to any port or place in the United States, shall not upon his arrival within four leagues of the coast thereof, or within the limits of any district thereof, where the cargo of such ship or vessel, or any part thereof, is intended to be discharged, produce such manifest or manifests as are heretofore required, in writing, to the proper officer or officers upon demand thereof, and also deliver such copy or copies thereof as aforesaid, according to the directions of this act, in each case, or shall not give an account of the true destination of such ship or vessel, which he is hereby required to do, upon request of such officer or officers, or shall give a false account of such destination, in order to evade the production of the said manifest or manifests, the said master or other person having the charge or command of such ship or vessel, shall forfeit, for every such neglect, refusal, or offence, a sum not exceeding five hundred dollars; and if such officer or officers first coming on board in each

Penalty on not exhibiting manifests, &c.

Penalty on the officer omitting to certify manifests, &c.

case, within the distance or limits aforesaid, shall neglect or refuse to certify on the back of such manifest or manifests, the production thereof, and the delivery of such copy or copies respectively, as are herein before directed to be delivered to such officer or officers; every such officer so neglecting or refusing shall forfeit and pay the sum of five hundred dollars. And the officer or officers who may apply to the master or person having the charge or command of any such ship or vessel, respecting any of the provisions in this and the foregoing sections, and who shall not receive full satisfaction therein, are hereby required to make a return in writing of the name of the vessel and master so offending, in any or all of the particulars required, immediately, or as soon after as possible, to the collector of the district to which such ship or vessel shall be considered to be bound.

Penalty on unloading goods without authority.

SEC. 27. *And be it further enacted*, That if after the arrival of any ship or vessel, so laden with goods as aforesaid, and bound to the United States, within the limits of any of the districts of the United States, or within four leagues of the coast thereof, any part of the cargo of such ship or vessel shall be unladen for any purpose whatever from out of such ship or vessel as aforesaid, before such ship or vessel shall come to the proper place for the discharge of her cargo, or some part thereof, and shall be there duly authorized by the proper officer or officers of the customs to unlade the same, the master or other person having the charge or command of such ship or vessel, and the mate, or other person next in command, shall respectively forfeit and pay the sum of one thousand dollars, for each such offence, and the goods, wares and merchandise, so unladen and unshipped, shall be forfeited and lost, except in the case of some unavoidable accident, necessity or distress of weather; of which unavoidable accident, necessity or distress, the master, or other person having the charge or command of such ship or vessel, shall give notice to, and together with two or more of the officers or mariners (of which the mate or other person next in command shall be one) on board such ship or vessel, shall make proof upon oath before the collector, or other chief officer of the customs of the district within the limits of which such accident, necessity or distress shall happen, or before the collector or other chief officer of the first district of the United States, within the limits of which such ship or vessel shall afterwards arrive, if the said accident, necessity or distress shall have happened not within the limits of any district, but within four leagues of the coast of the United States, which oath the said collector, or other chief officer, is hereby authorized and required to administer.

Forfeiture of such goods.

Exception in case of necessity.

Penalty on aiding in such unloading of goods.

SEC. 28. *And be it further enacted*, That if any goods, wares and merchandise, so unladen from on board any such ship or vessel, shall be put or received into any other ship, vessel, or boat, except in the case of such accident, necessity or distress as aforesaid, to be notified and proved as aforesaid, the said master or other person having the charge or command of any such ship, vessel or boat, into which the said goods, wares or merchandise, shall be so put and received, and every other person aiding and assisting therein, shall forfeit and pay treble the value of the said goods, wares or merchandise, and the ship, boat or vessel, in which they shall be so put, shall be forfeited and lost.

Penalty on sailing from a district before entry is made.

SEC. 29. *And be it further enacted*, That if any ship or vessel which shall have arrived within the limits of any district of the United States, from any foreign port or place, shall depart, or attempt to depart from the same, unless to proceed on her way to some more interior district to which she may be bound, before report or entry shall have been made by the master or other person having the charge or command of such ship or vessel, with the collector of some district of the United States, the said master or other person having such charge or command, shall forfeit and pay the sum of four hundred dollars; and it shall be lawful

for any collector, naval officer, surveyor, or commander of any of the cutters herein after mentioned, to arrest and bring back, or cause to be arrested and brought back, such ship or vessel, to such port of the United States to which it may be most conveniently done. *Provided*, that if it shall be made to appear by the oath of the said master, or other person having the charge or command of such ship or vessel, and of the person next in command, or other sufficient proof to the satisfaction of the collector of the district, within which such ship or vessel shall afterwards come, or to the satisfaction of the court in which the prosecution for such penalty may be had, that the said departure or attempt to depart, was occasioned by distress of weather, pursuit or duress of enemies, or other necessity, the said penalty shall not be incurred.

SEC. 30. *And be it further enacted*, That within twenty-four hours after the arrival of any ship or vessel, from any foreign port or place, at any port of the United States established by law, at which an officer of the customs resides, or within any harbor, inlet or creek thereof, if the hours of business at the office of the chief officer of the customs at such port will permit, or as soon thereafter as the said hours will permit, the master or other person having the charge or command of such ship or vessel shall repair to the said office, and shall make report to the said chief officer, of the arrival of the said ship or vessel; and within forty-eight hours after such arrival, shall make a further report in writing, to the collector of the district, which report shall be in the form, and shall contain all the particulars required to be inserted in a manifest, as the case may be; and the said master, or person having the charge or command of any such ship or vessel, shall declare to the truth of such report or manifest, as the same ought to be in conformity to this act; which declaration shall be on oath or solemn affirmation, before the said collector of the district, in the manner and form following, to wit:

Within what
time report is to
be made.

I (A. B.) do solemnly, sincerely and truly swear (or affirm) that the report and manifest subscribed with my name, and now delivered by me to the collector of the district of (insert the name of the district) contains, to the best of my knowledge and belief, a just and true account of all the goods, wares and merchandise, including packages of every kind and nature whatsoever, which were on board the (insert the denomination and name of the vessel) at the time of her sailing from the port of (here insert the name of the port or place the vessel last sailed from) or which have been laden or taken on board at any time since, and that the packages of the said goods are as particularly described as in the bills of lading, signed for the same by me, or with my knowledge; that I am at present, and have been during the voyage, master of the said vessel, (or insert, if otherwise, specifying how long he has been master) that no package whatsoever or any goods, wares or merchandise have been unladen, landed, taken out, or in any manner whatever removed from on board the said (insert denomination and name of the vessel) since her departure from the said port of (insert the name of the last port she sailed from) except such as are now particularly specified and declared in the abstract or account herewith, and that the clearance and other papers, now delivered by me to the collector, are all that I now have, or have had, that any way relate to the cargo of the said vessel. (And I do further swear (or affirm) that the several articles specified in the said manifest, as the sea stores for the cabin and vessel, are truly such, and were bona fide put on board the said (insert the denomination and name of the vessel) for the use of the officers, crew and passengers thereof, and have none of them been brought, and are not intended, by way of merchandise, or for sale, or for any other purpose, than above mentioned, and are intended to remain on board for the consumption of the said officers and crew; I further swear (or affirm) that if I shall hereafter discover, or know of any other or greater quantity of

Oath on mak-
ing report.

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(Signed) A. B.

Report of distilled spirits, wines, and teas, imported in the (here insert the name and denomination of the vessel) built in (here insert where built in the United States, or to what foreign nation belonging) burthen (here insert the tonnage of the vessel) whereof (here insert the name of the master) from (here insert the foreign port, from which the vessel last sailed) bound to (here insert the port or ports to which destined in the United States.)

	Marka.
	Numbers of casks, chests, and packages inclusive.
	Description of casks, chests, and packages inclusive.
	Kinds and qualities of spirits, wines and teas.
	Estimated gallons of spirits of each kind.
	Estimated gallons of wines of each kind.
	Estimated pounds of teas of each kind.
	To whom consigned.
	Where consigned.



Sea stores consisting of spirits, wines and teas.

(Here insert the quantities particularly.)

(Signed) A. B. Master of

To

Inspector of the revenue

for the port of

And if the said master, or other person having the charge or command of any such ship or vessel, shall neglect, or omit to make the said reports, or either of them (other than that required to be made to the surveyor, inspector of the revenue as aforesaid) and the declaration or declarations, or to take the said oath as required, or shall not fully comply with the true intent and meaning of this section, as the case may be, he shall, for each and every offence, forfeit and pay the sum of one thousand dollars.

Penalty on failing to make report.

SEC. 31. *And be it further enacted*, That it shall not be necessary for the master, or person having the charge or command of any ship or vessel of war, or of any ship or vessel employed by any prince, or state, as a public packet for the conveyance of letters and dispatches, and not permitted by the laws of such prince or state, to be employed in the transportation of goods, wares, or merchandise, in the way of trade, to make such report and entry as aforesaid.

Ships of war and public packets need not make report.

SEC. 32. *And be it further enacted*, That it shall be lawful for any ship or vessel to proceed with any goods, wares, or merchandise, brought in her, and which shall, in the manifest first delivered to any officer receiving the same, be reported as destined, or intended for any foreign port or place, from the district within which such ship or vessel shall first arrive, to such foreign port or place, without paying or securing the payment of any duties upon such of the said goods, wares, or merchandise as shall be actually re-exported in the said ship or vessel accordingly, any thing herein contained to the contrary notwithstanding: *Provided always*, that the said master, or person having the charge or command of the said ship or vessel, shall first give bond, with one or more sureties, in a sum equal to the amount of the duties upon the said goods, wares, or merchandise, as the same shall be estimated by the collector and naval officer of the port, where the said report shall be made, to the satisfaction of the said collector, with condition that the said goods, wares, or merchandise, or any part thereof, shall not be landed within the United States, unless due entry thereof shall have been first made, and the duties thereupon paid, or secured to be paid, according to law, which bonds shall be taken for the same periods, and cancelled in like manner, as bonds herein after directed to be given for obtaining drawbacks of duties: and the form of the said bonds shall be as follows, to wit:

Vessels may proceed to foreign ports with goods brought in them, on giving bond.

Know all men, by these presents, that we (here insert the name of the master of the vessel, and the name or names of the sureties) are held and firmly bound unto the United States of America, in the sum of _____ to be paid to the said United States: for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, dated this _____ day of _____ in the _____ year of the independence of the United States, and in the year of our Lord one thousand _____

Form of such bond.

Whereas the following described packages of goods, wares and merchandise, (here insert the marks, numbers, denomination, and number of packages, and contents, as far as may be, and if articles in bulk, the quantity and quality) imported into the district of _____ in the _____ (insert the denomination and name of vessel) whereof (insert name) is master, from (insert port or place where from) on the (insert date of vessel's entry) as per report and manifest then delivered by the said master, are now about to be exported and conveyed in the said (insert



denomination and name of vessel) to the port of (insert name of the port intended for) and whereas the duties that would have become due on the said goods, wares, and merchandise, had the same been unladen here and not so exported, would have amounted to the aforesaid sum of

Now therefore, the condition of this obligation is such, that if the above bounden shall and do within months from the date hereof, produce to the collector of this district, the certificates required by law, that the said enumerated (packages of merchandise, or articles in bulk as the case may be,) have been exported to and landed at the aforesaid port of or at any other port or place without the limits of the United States, or if neither the whole, nor any part of the said goods, wares and merchandise, shall be landed within the limits of the said United States, until due entry thereof shall have been first made, and the duties thereon paid or secured to be paid according to law, then the above obligation to be void, otherwise to be, and remain in full force and virtue.

Sealed and delivered }
in the presence of }

Vessels coming in through necessity need not give bond. Collector to put certain bonds in suit, if not cancelled.

Provided nevertheless, that such bond shall not be required in respect to the goods on board of any ship or vessel which shall have put into the United States from necessity, to be made to appear in manner herein after prescribed; and the collector receiving such bonds, or any other bonds taken upon the exportation of merchandise entitled to drawback, is hereby required and enjoined, immediately after the time when by the conditions of the same, they ought to be cancelled, to put the same in suit; provided the necessary proof shall not have been produced, or further time granted therefor by the Comptroller of the Treasury.

Vessels may proceed from district to district with certain goods.

Duties to be paid or secured in the district where the goods are landed.

SEC. 33. *And be it further enacted*, That it shall be lawful for any ship or vessel in which any goods, wares or merchandise shall be brought into the United States, from any foreign port or place, and which shall be specified in the manifest, verified on oath, or affirmation, before the collector of the port in which such ship or vessel shall first arrive, to be destined for other districts, to proceed with the same from district to district within the United States, in order to the landing, or delivery thereof, and the duties on such of the said goods only as shall be landed in any district, shall be paid or secured to be paid within such district.

The master of a vessel bound to another district to obtain a copy of his report and manifest, &c.

SEC. 34. *And be it further enacted*, That before any ship or vessel shall depart from the district in which she shall first arrive for another district (providing such departure be not within forty-eight hours after her arrival within such district) with goods, wares or merchandise, brought in such ship or vessel from a foreign port or place, the duties whereof shall not have been paid or secured, the master or person having the charge or command of such ship or vessel, shall obtain from the collector of the district from which she shall be about to depart (who is hereby required to grant the same) a copy of the report and manifest made by such master, or other person having the charge or command of such ship or vessel, certified by the said collector, to which copy shall be annexed a certificate of the quantity and particulars of the goods which shall appear to him to have been landed within his district, or of the quantity and particulars of the goods which remain on board and upon which the duties are to be paid, or secured to be paid, in some other district.

The form of which certificate shall be as follows:

District of

Port of

These are to certify, that the within is a true copy of the report and manifest of the cargo of the (insert the denomination and name of the vessel) whereof (insert the name) is master from (insert the port where

from) entered at this port the (insert the day and month of entry) as exhibited on (oath or affirmation) by the said master: That no part of the said cargo as expressed in such manifest, hath been unladen or landed at this port: (or as the case may require) That there hath been unladen and landed at this port, and the duties paid or secured to be paid on the following articles, (or) That all the said cargo as expressed in the said manifest hath been duly entered and landed in this district according to law, except the following articles (here enumerate the marks, numbers, packages and contents, or if articles in bulk, the quantities, whether landed or remaining on board, as the case may require) and that bond hath here been entered as the law directs for the delivery of the (insert the whole or remaining part, as the case may require) of the said cargo, at the (insert the port and district of destination.)

Witness our hands and seals, this day of

A. B. Collector.

C. D. N. Officer.

And within twenty-four hours after the arrival of such ship or vessel within any other district, the said master, or person having the charge or command of such ship or vessel, shall make report or entry, to or with the collector of such other district, producing and showing the said certified copy of his said first report, together with a certificate from each collector of any other district, within which any of the goods, wares, or merchandise, brought in such ship or vessel, shall have been before landed; of the quantity and particulars of such goods, wares, or merchandise, as shall have been so landed in each district respectively; except in the state of Georgia, where such report shall be made within forty-eight hours: *Provided always*, that the master or person having the charge or command of the said ship or vessel, shall first give bond, with one or more sureties, to the satisfaction of the collector of the district within which the said ship or vessel shall first arrive, in a sum equal to the amount of the duties on the residue of the said goods, according to such estimate as the said collector shall form thereof, with condition, that the said residue of such goods shall be duly entered and delivered in such other district, or districts of the United States, for which the same shall have been reported to be destined.

And at the other district make report and exhibit his first report.

Bond to be given on the transportation of goods from district to district.

And the form of the said bond shall be as follows:

Know all men by these presents, that we (here insert the name of the master of the vessel, and the name or names of the sureties) are held and firmly bound unto the United States of America, in the sum of to be paid to the said United States; for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals; dated this day of in the year of the independence of the said United States; and in the year of our Lord one thousand

Whereas the following goods, wares, and merchandise (here insert the marks, number, denomination and number of packages and contents, as far as may be, or if articles in bulk, the quantity and quality) imported into the district of in the (insert the denomination and name of vessel) whereof (insert name) is master, from (insert name of port, &c.,) on the (insert date of vessel's entry) as per report and manifest then delivered by the said master; are now intended to be exported and conveyed in the said (insert the denomination and name of the vessel) to the district of (insert the district or districts where intended to be sent) and whereas the duties that would have become due on the said goods, wares, and merchandise, had the same been unladen, would have amounted to the aforesaid sum of

Now therefore the condition of this obligation is such, that if the above bounden shall and do within six months from the date hereof, produce to the collector of this district the certificates

3 : 2

required by law, that the said enumerated (packages of merchandise, or articles in bulk as the case may be,) have been duly entered and delivered at the aforesaid district of _____ or any other port or district of the United States, then the above obligation to be void, otherwise to be and remain in full force and virtue.

How the said
bond shall be
cancelled.

Sealed and delivered }
in the presence of }
And the said bond shall be cancelled or discharged within six calendar months from the date thereof, by the production of a certificate or certificates from the collector or collectors of the district or districts for which the said goods shall have been reported, testifying the due entry and delivery of the said goods, in such district or districts, or upon due proof to the satisfaction of the collector by whom the said bond shall have been taken, and to the naval officer of such port (if any) that such entry and delivery were prevented by some unavoidable accident or casualty, and that if the whole, or any part of the said goods, shall not have been lost, that the same have been duly entered and delivered within the United States.

And the form of the certificate aforesaid shall be as follows:—

District of _____
Port of _____

These are to certify, that there have been unladen and landed at this port, from on board the (insert the denomination and name of the vessel) whereof (insert the name) is master, from (insert district and port where from) the following packages of merchandise (here detail the several packages with their respective denominations, their marks and numbers, and if any articles in bulk, the quantities delivered) for which the duties have been (paid or secured) at the aforesaid port of (insert the port.)
Witness our hands and seals this _____ day of _____

A. B. Collector.

C. D. N. Officer.

Penalty on
failing to obtain
copy of the first
report, &c.

And if the master, or other person having the charge or command of any such ship or vessel, shall fail by his neglect or fault to obtain the said copy of his said report, from the collector of the district from which he shall be so about to depart, or if [of] any certificate which he ought to obtain as aforesaid, or shall neglect to produce and show the same to the collector of any other district, to which the said ship or vessel shall afterwards proceed within the time for that purpose herein before specified, he shall forfeit and pay, for every such neglect or omission, five hundred dollars.

Duty of mas-
ters of vessels
proceeding from
district to dis-
trict with spirits,
wines and teas.

Sec. 35. *And be it further enacted*, That in addition to the provisions and requirements aforesaid, it shall be the duty of each and every master, or other person having the charge or command of any ship or vessel, arriving from any foreign port or place, having on board distilled spirits, wines, or teas, other than sea stores, intended to be transported from one port in the United States, to another port in the said United States, whether in the same or in different districts, previous to the departure of such ship or vessel from the port at which she shall first arrive, to apply to the surveyor or officer acting as inspector of the revenue for the port, for a certificate of the quantity and particulars of such spirits, wines, or teas, as shall have been certified, or reported to him to have been imported in such ship or vessel, and of the quantity and particulars of such spirits, wines, or teas, as shall appear to have been landed out of such ship at such port; which certificate the surveyor or inspector of the revenue shall forthwith grant, and the master or person having the charge or command of such ship or vessel, shall, within twenty-four hours after her arrival at the port to which she shall be bound, deliver the said certificate to the surveyor, or person acting as inspector of the revenue of such last mentioned port; and if such

ship or vessel shall proceed from one port to another within the United States, with the whole or any part of the spirits, wines or teas brought in her as aforesaid, without having first obtained such certificate, or if within twenty-four hours after her arrival at such other port, the said certificate shall not be delivered to the surveyor or inspector as aforesaid, the master or person having the charge or command of the said ship or vessel shall, in either case, forfeit the sum of five hundred dollars, and the spirits, wines or teas on board her shall be forfeited and may be seized.

And the form of the said certificate shall be as follows:—

District of

Office of Inspection for the
Port of

I certify that the within is a true copy of the report made to me of distilled spirits, wines and teas imported in the (insert the name and denomination of the vessel) built in (here insert where built in the United States, or to what foreign nation belonging) burthen (here insert the tonnage of the vessel) whereof (here insert the name of the master) from (here insert the foreign port from which the vessel last sailed) bound to (here insert the port or ports to which destined in the United States,) that no part of the said spirits, wines or teas hath been unladen or landed at this port (or as the case may require.) That there have been landed at this port in pursuance of permits for that purpose, the following quantities, to wit: (here insert the marks, number, description of packages, casks, chests, kinds and quantities of all spirits, wines and teas landed at the port of inspection, agreeably to the form prescribed for the report) and no other or greater quantities than are above expressed, (or) that all the said spirits, wines and teas have been duly landed in this district, except the following, the duties whereof are to be paid or secured to be paid in the district of (insert the district of destination and enumerate the marks, numbers, description of casks, chests or other packages, kinds and quantities of all spirits, wines and teas, which remain on board.)

Witness my hand the day and year aforesaid,

A. B. Inspector of the revenue
for the port of

And each and every surveyor, or officer acting as inspector of the revenue, for any port at which a ship or vessel may arrive with a certificate as aforesaid, shall certify in manner aforesaid all deliveries of spirits, wines or teas, made at their respective ports, which certificate shall be annexed to the certificate granted at the port of original importation.

Sec. 36. *And be it further enacted*, That the owner or owners, consignee or consignees of any goods, wares or merchandise, on board of any such ship or vessel, or in case of his, her or their absence or sickness, his, her or their known agent or factor, in his, her or their names, within fifteen days after the report of the master, or person having the charge or command of such ship or vessel, to the collector of the district for which such goods, wares or merchandise shall be destined, shall make entry thereof in writing with the said collector, and shall in such entry specify the vessel and master's names in which, and the port or place from whence such goods, wares or merchandise were imported, the particular marks, numbers, denomination and prime cost, including charges of each particular package or parcel whereof the entry shall consist, or if in bulk, the quantity, quality and prime cost, including charges thereof, particularly specifying the species of money in which the invoices thereof are made out; and shall also produce to the said collector and naval officer (if any) the original invoice or invoices of the said goods, wares or merchandise, or other documents received in lieu

Penalty on
failing to com-
ply with those
duties.

Form of in-
spector's certifi-
cate for spirits,
wines and teas,
transported
from district to
district.

Certificate to
be had of the in-
spector at the
port of delivery.

Entry of goods
to be made with-
in fifteen days
after the mas-
ter's report.

thereof, or concerning the same, in the same state in which they were received, with the bill or bills of lading for the same; which invoices shall be signed by the persons in the offices of the collector and naval officer, who shall have compared and examined the same; and the said entry or entries shall, as the nature of the case will admit or require, be agreeably to the form following, to wit;

Form of entry. Entry of merchandise imported by (insert the name of the importer or consignee) in the (insert the name and denomination of the vessel, and master's name) from (insert the place from which arrived) (insert date of entry.)

Marks.	Numbers inclusive.	Packages and contents.	Quantity per invoice of articles not subject to specific duties.	Value of articles subject to specific duties.	Value subject to 10 per cent. ad valorem.	Value subject to 12 1/2 per cent. ad valorem.	Value subject to 15 per cent. ad valorem.	Value subject to 20 per cent. ad valorem.	Value subject to 40 per cent. ad valorem.	Amount of free goods.	Charges not subject to duty.	Total amount per invoice.

Form of the entry may be varied.

Provided, That the form before mentioned shall and may be varied and adapted to any alterations which may be made in the rates of duties upon goods, wares and merchandise, hereafter to be imported into the United States. And the entry or entries to be made by any importer, consignee or agent as aforesaid, shall be verified by the oath or affirmation of the person making the same, the form of which oath or affirmation shall, as the case may require, be as follows, to wit:

Oath to be made on entry.

District of
Port of

Form of the oath.

I (here insert the name of the person making entry) do solemnly, sincerely and truly swear (or affirm) that the entry now subscribed with my name, and delivered by me to the collector of (insert the name of the district) contains a just and true account of all the goods, wares and merchandise imported for sale, or intended to be landed in this district, for me or on my account, or on account of any house of trade or partnership in which I am concerned, in this district, or which actually came consigned to me, or to any house of trade or partnership in which I am concerned, or (if the entry be made by an agent) imported by, or consigned to (insert the name of the person or firm for whom entry is made) and intended for sale or to be landed in this district, in the (insert the name and denomination of the vessel) whereof (insert the name of the master) is master, from (insert the name of the port from which the vessel arrived) that the said entry contains a just and true account in (insert the denomination of money in which the invoices and entry are made) of the cost thereof, including all charges; that the invoice or invoices and bill or bills of lading now produced by me, are the true, genuine and only invoices and bills of lading by me received, of the said goods wares and merchandise imported or consigned as aforesaid, and the only invoices by which I have been charged, or for which I am to account, and that the said invoices and bills of lading are in the actual state in which they were received by me, and that I do not know of any other invoices or account of the said goods, wares or merchandise, different from what is or are here produced: I do further swear (or affirm) that if I hereafter discover any other or greater quantity of



goods, wares or merchandise, than is contained in the entry aforesaid, or shall receive any invoice of the whole or any part thereof, other in quantity, quality and price than has been now exhibited, I will immediately and without delay report the same to the collector of this district: I also swear (or affirm) that nothing has been concealed or suppressed in the entry aforesaid, whereby to avoid the just payment of the duties imposed by the laws of the United States, and that all matters are justly and truly expressed therein, according to my best knowledge and belief. So help me God.

Sworn (or affirmed) this day of before A. B. Collector.

Provided, That whenever any entry shall be made with the collector of any district, of merchandise imported into the United States subject to duty, by any agent, factor, or person, other than the person to whom they belong, or to whom they are ultimately consigned, it shall be the duty of the collector to take a bond with surety from such agent, factor or person (other than the bond or [bonds] for securing the duties, in the penal sum of one thousand dollars) with condition that the bona fide owner or consignee of such goods, wares or merchandise, shall, on or before the first day of payment stipulated in the bond or bonds for securing the duties, deliver, or cause to be delivered to the said collector, a full and correct account of the said goods, wares and merchandise imported by him, or for him on his own account, or consigned to his care, in the same manner and form as required by this section in respect to an entry previous to the landing of any merchandise, which account shall be verified as in the case of an entry, by a like oath or affirmation, to be taken and subscribed before any judge of the United States, or the judge of any court of record of a state, or before a collector of the customs of the same or some other district; and in case of the payment of the duties, at the time of entry, by any factor or agent, on the goods, wares or merchandise entered by him, the condition of the bond aforesaid shall be to produce the account of the proper owner, or consignee, verified in manner as before directed, within ninety days from the date of such bond.

When entry is made by an agent, he shall give bond, conditioned for producing an account of the goods, verified by the owner.

And the form of the said bond shall be as follows, to wit:

Know all men by these presents, that we (here insert the names of the principal surety or sureties) are held and firmly bound unto the United States of America, in the sum of one thousand dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Form of bond to be given by the agent.

Witness our hands and seals this day of one thousand seven hundred and ninety

Whereas the above bounden has this day duly entered at the custom-house of and (paid or secured to be paid, as the case may be) the duties on sundry goods, wares and merchandise imported in the (insert the denomination and name of the vessel) whereof (insert name) is master, from (insert the port or place where from) as particularly enumerated in the entry thereof made and subscribed by the said in behalf of (insert the name or names of the person or persons, actual owners, or consignees) bearing equal date herewith.

The condition of this obligation therefore is such, that if the said bounden shall, on or before the deliver or cause to be delivered to the collector of the customs for the district of (insert name of the district where the bond is taken) a full and correct account from the said (insert name of the actual owner or consignee) of the aforesaid merchandise imported by him on his own account, or consigned to his care, verified by the oath of the said being the proper owner or consignee, in manner and form as would be required if he were personally present, taken before any judge of the United States, or of a court of record of a state, or before the collector

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of any other district, then this obligation shall be null and void, otherwise it shall be and remain in full force and virtue.

Sealed and delivered)
in the presence of)

Manner of making an entry, where the particulars of goods are not known.

Provided always, That where the particulars of any goods, wares or merchandise shall be unknown, in lieu of the entry herein before directed to be made, an entry thereof shall be made and received according to the circumstances of the case, the party making the same, declaring upon oath all that he or she knows or believes concerning the quality and particulars of the said goods, wares and merchandise, and that he or she hath no other knowledge or information concerning the same; which entry, as well the first as the last, shall be made in writing, and shall be subscribed by the party making the same, if by the proper owner or consignee, in their own name, or if by an agent, factor or person other than such owner or consignee, in his or their names, as agents or factors for such owner or consignee: *Provided*, that in every case in which the entry of any goods, wares or merchandise shall be imperfect, for want of invoices, bills of lading, or for any other cause, it shall be the duty of the collector to take the said goods, wares and merchandise into his custody, until the quantity, quality or value thereof, as the case may require, can be ascertained in manner hereafter directed and prescribed.

In case of an imperfect entry the collector is to take the goods into custody.

Separate entry to be made of spirits, wines and teas.

SEC. 37. *And be it further enacted*, That every importer of distilled spirits, wines or teas, or person to whom distilled spirits, wines or teas are consigned, shall make a separate and additional entry thereof, specifying the name of the vessel, and master, in which, and the place from whence, such spirits, wines or teas were imported, together with the quantity and quality thereof, and a particular detail of the chests, casks, or vessels containing the same, with their marks and numbers, which entry shall be subscribed by the person making the same, for himself, or in behalf of the person for whom such entry is made; and shall be certified by the collector, before whom the same is made, as being a true copy, and conformable to the general entry before directed, in respect to all distilled spirits, wines and teas therein contained; which entry thus certified shall be transmitted to the surveyor or officer acting as inspector of the revenue for the port, where it is intended to commence the delivery of such spirits, wines or teas so entered, or any part thereof: And every permit granted by such collector and naval officer, where any, for the unloading of said spirits, wines or teas, or any part thereof, shall, previous to such landing or unloading thereof, be produced to the said officer of inspection, who shall record or register in proper books the contents thereof, and shall endorse thereupon the word, "*Inspected*," the time when, and his own name; after which he shall return the said permit to the person by whom it shall have been produced, and then, and not otherwise, it shall be lawful to land the spirits, wines or teas therein specified; and if the said spirits, wines or teas shall be landed without such endorsement upon the permit granted for that purpose, the master, or other person having the charge or command of the ship or vessel from which the same shall have been so landed, shall for every such offence forfeit and pay the sum of five hundred dollars, and the spirits, wines or teas so landed shall be forfeited.

Spirits, wines and teas to be landed under inspection.

SEC. 38. *And be it further enacted*, That all distilled spirits, wines and teas shall be landed under the inspection of the surveyor, or other officer acting as inspector of the revenue for the port, and such of the inspectors of the customs as shall be deputed by him for that purpose, and not otherwise, on pain of forfeiture thereof, for which purpose the said officer or officers shall at all reasonable times attend: *Provided*, that this shall not be construed to exclude the inspection of any officer of the customs, as now or heretofore practised.

Sec. 39. *And be it further enacted*, That the officers of inspection of any port where distilled spirits, wines or teas shall be landed, shall, upon the landing thereof, and as soon as the casks, chests, vessels and cases, containing the same, shall be inspected, gauged or measured, brand or otherwise mark in durable characters, the several casks, chests, vessels and cases containing the same, and the said marks shall express the number of casks, chests, vessels or cases, whether of spirits, wines or teas, marked by each officer respectively, in each year, in progressive numbers for each of the said articles; also the port of importation, the name of the vessel, and the surname of the master; also each kind of spirits, wines or teas, for which different rates of duty are or shall be imposed, the number of gallons in each cask or case, if spirits or wines, the rate of proof if spirits, and the number of pounds weight if teas; also the name of the surveyor or chief officer of inspection for the port, and the date of importation; of all which particulars the chief officers of inspection shall keep fair and correct accounts, in books to be provided for that purpose.

Spirits, wines
and teas to be
marked.

Sec. 40. *And be it further enacted*, That the surveyor or chief officer of inspection as aforesaid, within the port or district in which the said spirits, wines or teas shall be landed, shall give to the proprietor, importer or consignee thereof, or his or her agent, a certificate, to remain with him or her, of the whole quantity of the said spirits, wines or teas, which shall have been so landed; which certificate, besides the quantity, shall specify the name of such proprietor, importer, consignee or agent, and of the vessel from on board which the said spirits, wines or teas shall have been landed, and of the marks of each cask, chest, vessel or case containing the same; which certificate shall be of the form following, to wit:

General certificate to be given to the importer of spirits, wines or teas.
1836, ch. 364.

District of
Inspector's Office, No.
Port of

I certify, that (here insert the name of the proprietor, importer or consignee) imported into this district on the (here insert date of importation) in the (here insert the name of the vessel, and whether of the United States or foreign, and the name of the master) from (here insert the place from which imported, the number of, and whether casks, chests, vessels or cases) of (here insert whether spirits, wines or teas, and the kind of each) marked as per margin (insert in the margin the marks and numbers, if any, at the time of importation) which (here insert whether casks, chests, vessels or cases) have been marked as follows (here insert the marks of the inspector of the port) containing (here insert the quantity of spirits, wines or teas) according to returns made to this office.

Form thereof.

A. B. Inspector.

Sec. 41. *And be it further enacted*, That the surveyor, or chief officer of inspection as aforesaid, shall in addition to the general certificate aforesaid, give to the proprietor, importer or consignee of any distilled spirits, wines or teas, or his or their agent, a particular certificate, which shall accompany each cask, chest, vessel or case of distilled spirits, wines or teas, wherever the same may be sent, within the limits of the United States, as evidence that the same have been lawfully imported; and which certificate shall be of the form following, to wit:

Particular certificate to be given to the importer to accompany each cask, &c.
1836, ch. 364.

No. District of
Port of

I certify, that there was imported into this district on the (here insert the date of importation) by (here insert the name of the proprietor, importer or consignee) in the (here insert the name of the vessel, the surname of the master, and whether a vessel of the United States or a foreign vessel) from (here insert the place from which imported) one

Form thereof.



(here insert whether cask, chest, vessel or case, by the proper name) of (here insert whether spirits, wines or teas, and the kind of each) numbered and marked as per margin, (the marks of the inspector to be inserted in the margin) containing (here insert the number of gallons and rate of proof, if spirits, or gallons, if wines, or the number of pounds weight nett if teas.)

A. B. Supervisor.

Countersigned by

C. D. Inspector.

Supervisors to provide blank certificates.

SEC. 42. *And be it further enacted*, That the supervisors of the several districts shall provide blank certificates, under such checks and devices as shall be prescribed by the proper officers of the treasury, and shall number, sign and deliver the same to the officers who may perform the duties of inspectors of the revenue, for the several ports in their respective districts; which blank certificates shall be filled up and countersigned by the inspectors of the revenue aforesaid, who shall be accountable therefor to the supervisors; and the said inspectors shall make regular and exact entries of all certificates which shall be granted as aforesaid, as particularly as therein described.

On sale, certificate to be delivered to the purchaser.

SEC. 43. *And be it further enacted*, That the proprietor, importer, or consignee, or his or her agent, who may receive said certificates, shall upon the sale or delivery of any of the said spirits, wines or teas, deliver to the purchaser or purchasers thereof, the certificate or certificates which ought to accompany the same, on pain of forfeiting the sum of fifty dollars for each cask, chest, vessel or case, with which such certificate shall not be delivered; and if any casks, chests, vessels or cases, containing distilled spirits, wines or teas, which by the foregoing provisions ought to be marked and accompanied with certificates, shall be found in the possession of any person unaccompanied with such marks and certificates, it shall be presumptive evidence that the same are liable to forfeiture; and it shall be lawful for any officer of the customs or of inspection to seize them as forfeited; and if upon the trial in consequence of such seizure, the owner or claimant of the spirits, wines or teas seized, shall not prove that the same were imported into the United States, according to law, and the duties thereupon paid or secured, they shall be adjudged to be forfeited.

Absence of certificates to be presumptive evidence for forfeiture of spirits, wines and teas.

On the sale of casks, &c. which have been emptied, the marks to be defaced in presence of an officer.

SEC. 44. *And be it further enacted*, That on the sale of any cask, chest, vessel or case, which has been or shall be marked pursuant to the provisions aforesaid, as containing distilled spirits, wines or teas, and which has been emptied of its contents, and prior to the delivery thereof to the purchaser, or any removal thereof, the marks and numbers, which shall have been set thereon by or under the direction of any officer of inspection, shall be defaced and obliterated in the presence of some officer of inspection or of the customs, who shall on due notice being given attend, for that purpose, at which time the certificate which ought to accompany such cask, chest, vessel or case, shall also be returned and cancelled: And every person, who shall obliterate, counterfeit, alter or deface any mark or number placed by an officer of inspection upon any cask, chest, vessel or case, containing distilled spirits, wines or teas, or any certificate thereof; or who shall sell or in any way alienate or remove any cask, chest, vessel or case, which has been emptied of its contents, before the marks and numbers, set thereon pursuant to the provisions aforesaid, shall have been defaced or obliterated, in presence of an officer of inspection as aforesaid; or who shall neglect or refuse to deliver the certificate issued to accompany the cask, chest, vessel or case, of which the marks and numbers shall have been defaced or obliterated in manner aforesaid, on being thereto required by an officer of inspection or of the customs, shall for each and every such offence forfeit and pay one hundred dollars, with costs of suit.

Penalty on defacing, &c. marks, &c. on casks, &c. or certificates; or selling casks, &c. or refusing to deliver up certificates.



SEC. 45. *And be it further enacted*, That in order to ascertain what articles ought to be exempt from duty, as the sea stores of a ship or vessel, the master or other person having the charge or command of any ship or vessel shall particularly specify the said articles, in the report or manifest to be by him made, designating them as the sea stores of such ship or vessel; and in the oath to be taken by such master, or other person, on making such report in manner before prescribed, he shall declare that the articles so specified as sea stores are truly such, and are not intended by way of merchandise or for sale; whereupon the said articles shall be free from duty. *Provided always*, that if it shall appear to the collector to whom such report and manifest shall be made and delivered, together with the naval officer where there is one, or alone, where there is none, that the quantities of the said articles, or of any part thereof, so reported as sea stores, are excessive, it shall be lawful for the said collector, jointly with the naval officer, or alone, as the case may be, in his or their discretion, to estimate the amount of the duty on such excess, which shall be forthwith paid by the said master or other person having the charge or command of such ship or vessel, to the said collector, on pain of forfeiting the value of such excess; and if any other or greater quantity of articles are found on board such ship or vessel as sea stores than are specified in such entry, or if any of the said articles shall be landed without a permit first obtained from the collector and naval officer of the port (where any) for that purpose, all such articles as are not included as aforesaid, in the report or manifest delivered on oath or affirmation, as aforesaid, by the master or other person having the charge or command of such ship or vessel, or which shall be landed without such permit as aforesaid, shall be forfeited, and may be seized; and the master, or person having the command of such ship or vessel, shall moreover forfeit and pay treble the amount or value of the articles so omitted or landed.

Report of sea stores to be made.

Duties to be paid on excessive quantities thereof.

Penalty on a false entry, and on landing without a permit.

SEC. 46. *And be it further enacted*, That from and after the thirtieth day of June next, the wearing apparel, and other personal baggage, and the tools or implements of a mechanical trade only, of persons who arrive in the United States, shall be free and exempted from duty; and to ascertain what articles ought to be exempted, according to the true intent and meaning of the provision aforesaid, it is directed, that due entry thereof, as of other goods, wares and merchandise, but separate and distinct from that of any other goods, wares and merchandise, imported from a foreign port or place, shall be made with the collector of the district in which the said articles are intended to be landed, by the owner or owners thereof, or his, her or their agent, expressing the persons by whom or for whom such entry is made, and particularizing the several packages, and their contents, with their marks and numbers; and the person or persons who shall make the entry, shall take and subscribe an oath or affirmation before the said collector, as the case may require, in manner following, to wit:

Baggage, and mechanical implements exempt from duty.

Entry of them to be made.

District of _____ ss.
Port of _____

I (here insert the name of the person making the entry) do solemnly, sincerely and truly swear (or affirm) that the entry subscribed by me and hereto annexed, contains, to the best of my knowledge and belief, a just and true account of the contents of the several (here insert whether chests, cases or packages) mentioned in the said entry, imported in the (here insert the name of the vessel, and master's name) from (here insert the port from which arrived) and that they contain no goods, wares or merchandise whatever, other than the wearing apparel and other personal baggage (or if the case require) and the tools of the trade of (here insert what mechanical trade) all of which are the property of (here insert to whom belonging, and family, as the case may require) who has

Form of oath.

3 K

or have arrived (or as the case may require) who is or are shortly expected to arrive in the United States; and are not directly or indirectly imported for any other person or persons, or intended for sale.

So help me God.

Bond to be given when entry thereof is made by an agent.

And in case the party shall be other than the owner of the said articles, he or she shall give bond, with one or more sureties to the satisfaction of the said collector, in a sum equal to what would be the amount of the duties on the said articles, if imported subject to duty; the form of which bond shall be as follows:

Know all men by these presents, that we (here insert the names of the principal and sureties) are held and firmly bound unto the United States of America, in the sum of _____ to be paid to the said United States; for payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals. Dated the _____ day of _____ in the _____ year of the independence of the United States, and in the year of our Lord one thousand _____

Whereas the above named _____ has this day, for and in behalf of _____ exhibited an entry, subscribed with his name, of the following packages of wearing apparel and other articles, as being exempted from duty (here insert the number and description of packages, together with their marks and numbers) and has made oath before the collector of the district of _____ that the said articles are the property of the said _____ that they are truly and bona fide intended for the sole use of himself and (family, as the case may require) and are not directly or indirectly imported for any other person, or intended for sale.

Now, therefore, the condition of this obligation is such, that if the said _____ shall, within one year from the date hereof, take and subscribe the oath prescribed by law in such case, before the said collector, or if the said oath, duly authenticated, shall be produced to the said collector agreeably to the true intent and meaning of the said law, then this obligation to be void, or else to remain and be in full force and virtue.

Sealed and delivered }
in the presence of }

Baggage, &c. may be examined.

And on compliance with the conditions aforesaid, and not otherwise, a permit shall and may be granted for landing the said articles: *Provided nevertheless*, that whenever the collector and naval officer (if any) shall think proper so to do, they may and are hereby authorized, in lieu of the provisions and directions before mentioned, to direct the baggage of any person arriving within the United States, to be examined by the surveyor of the port, or an inspector of the customs, and to make a return of the same; and if any articles shall be contained therein, which in their opinion ought not to be exempted from duty, according to the true intent and meaning of this act, due entry shall be made therefor, and the duties thereon paid or secured to be paid: *And provided*, that whenever any article or articles subject to duty, according to the true intent and meaning of this act, shall be found in the baggage of any person arriving within the United States, which shall not, at the time of making entry for such baggage be mentioned to the collector before whom such entry is made by the person making the same, all such articles so found shall be forfeited, and the person in whose baggage they shall be found shall moreover forfeit and pay treble the value of such articles.

Forfeiture in case articles, subject to duty and not entered, are found therein.

Articles of the growth, &c. of the U. States, when brought back, to be free of duties.

SEC. 47. *And be it further enacted*, That on any goods, wares or merchandise, of the growth or manufacture of the United States, which may have been exported to some foreign port or place, and brought back to the said states, and upon which no drawback, bounty or allowance has been paid, no duty shall be demanded. *Provided*, that the regulations herein after prescribed, for ascertaining the identity of such goods, wares or merchandise, be observed and complied with.

SEC. 48. *And be it further enacted*, That report and entry of goods, wares or merchandise, returned as aforesaid, shall be made as in other cases of goods, wares and merchandise imported from a foreign port or place; and proof, by oath or affirmation of the person or persons having knowledge of the facts, shall be made to the satisfaction of the collector of the district with whom such entry shall be made, jointly with the naval officer, if there be a naval officer, or alone, if there be no naval officer, that the said articles had been exported from the United States, as of the growth, produce or manufacture of the same, and of the time when, by whom, in what ship or vessel, and for what port or place, they were so exported; the form of which oath or affirmation shall be as follows:

District of _____ ss.

Port of _____

I, A. B., do solemnly, sincerely and truly swear, (or affirm, as the case may be) that the several articles of merchandise, mentioned in the entry hereto annexed, are to the best of my knowledge and belief, truly and bona fide of the growth, product or manufacture of the United States, (as the case may be) and that they were truly exported and imported as therein expressed, and that no drawback, bounty or allowance has been paid or admitted thereon, or any part thereof. So help me God.

Sworn to,

A. B.

Report, entry and oath to be made, in such case.

Report of the oath.

And if the collector, who may receive the entry aforesaid, shall be other than the collector of the district from which the said articles shall have been exported, a certificate of the latter shall be produced to the former, testifying the exportation thereof; the form of which shall be as follows:

Certificate of their exportation to be produced:

District of _____

Port of _____

This is to certify that there were cleared out at this port on the (insert the day of clearance) in the (insert the denomination and name of the vessel) whereof (insert the name) was master, for (insert the port or place for which cleared) the following articles of merchandise (here enumerate the number of packages, their denominations, marks, and numbers, together with their contents) on which no drawback, allowance or bounty hath been paid or admitted.

Form thereof:

A. B. Collector.

C. D. Naval Officer.

Whereupon a permit shall and may be granted for landing the same. *Provided*, that if the said certificate cannot be immediately produced, and if the proof otherwise required shall be made, a bond shall and may be given in the following form, with one or more sureties, to the satisfaction of the collector of the district, within which the said articles are intended to be landed, in a sum equal to what the duties would be on the said articles, if they were not of the growth, product or manufacture of the United States:

Permit to be granted.

Bond may be taken to produce the certificate.

Know all men by these presents, that we (insert the name of the principal and sureties) are held and firmly bound unto the United States of America, in the sum of _____ to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this _____ day of _____ in the _____ year of the independence of the United States, and in the year of our Lord one thousand seven hundred and ninety _____

Form of such bond.

Whereas _____ has this day made entry at the custom-house of the port of _____ of the following articles, viz. (here particularize the packages, marks, numbers and contents) as per entry by him subscribed, and hath likewise sworn (or affirmed) before the collector of the said port, that the said articles are of the growth, product or manufacture of



the United States, and that they were exported from the district of
in the whereof was master, on or about the
and whereas the duties on the aforesaid articles, if of foreign
growth or importation, would amount to the aforesaid sum of

The condition therefore of this obligation is such, that if the above
bounden do, within six months from the date hereof, produce, or
cause to be produced, to the collector of the district of a certifi-
cate under the hand and seal of the collector (and naval officer if any)
of the aforesaid port of of the said articles having been actually
exported from thence as herein set forth, subject to no drawback, bounty
or allowance, then this obligation to be void and of no effect, otherwise
it shall be and remain in full force and virtue.

Sealed and delivered }
in the presence of }

And upon receiving a bond as aforesaid, it shall be lawful for the said
collector, and naval officer, where any, to grant a permit for landing of
the said articles in like manner as if the said certificate had been pro-
duced; and in default of such certificate being produced, within the
time limited in such bond, the collector taking the same is required and
enjoined to enforce the payment thereof, as in the case of other bonds
taken for duties on goods, wares and merchandise imported into the
United States.

Manner in
which oaths and
affirmations are
to be taken.

SEC. 49. *And be it further enacted*, That all oaths or affirmations to
be taken, upon making of any of the reports or entries, or respecting
any of the acts herein mentioned, whether by the master or other per-
son having the charge or command of any ship or vessel, or the owner
or consignee of any goods, wares or merchandise, his or her factor or
agent, or by any other person, shall be administered by the collector, or
officer to or with whom report or entry shall be made, and shall be
reduced to writing, and subscribed by the person swearing or affirming,
and also by the person administering the said oaths or affirmations.
And the collector jointly with the naval officer, or alone where there is
none, shall, according to the best of his or their judgment or informa-
tion, make a gross estimate of the amount of the duties on the goods,
wares or merchandise, to which the entry of any owner or consignee,
his or her factor or agent, shall relate, which estimate shall be endorsed
upon such entry, and signed by the officer or officers making the same.

Duties to be
estimated and
endorsed on the
entry;

which being
paid or secured,
permit to land
shall be granted.

And the amount of the said estimated duties having been first paid, or
secured to be paid, pursuant to the provisions of this act, the said col-
lector shall, together with the naval officer, where there is one, or alone
where there is none, grant a permit to land the goods, wares and mer-
chandise, whereof entry shall have been so made, and then, and not
before, it shall be lawful to land the said goods; and all permits shall
specify, as particularly as may be, the goods to be delivered, namely, the
number and description of the packages, whether trunk, bale, chest,
box, case, pipe, hogshead, barrel, keg, or any other packages whatever,
with the mark and number of each package, and as far as circum-
stances will admit, the contents thereof, together with the names of the
vessel and master, in which, and the place from whence they were im-
ported; and no goods, wares or merchandise shall be delivered by any
inspector or other officer of the customs, that shall not fully agree with
the description thereof in such permit: And the form of all permits for
the purposes aforesaid, and for deliveries from the public stores, shall be
as follows:

Specification
to be contained
in such permits.

Port of

To the inspectors of the port (or) the keeper of the public store (as the
case may require.)

Form of per-
mits to land.

We certify, that (insert the name of the actual owner or consignee)
has paid (or) secured to be paid (as the case may be) the duties on mer-

chandise contained in the following packages, in conformity to the entry thereof of this date, which merchandise was imported in the (insert the denomination and name of vessel, master's name, and the port from which arrived) permission is accordingly hereby given to land (or) deliver the same, viz. (here particularly insert: the mark, number and denomination of each package, and as far as may be, their contents, noting those articles that are to be either weighed, gauged or measured.)

A. B. Collector.

C. D. Naval Officer.

Sec. 50. *And be it further enacted*, That no goods, wares or merchandise, brought in any ship or vessel from any foreign port or place, shall be unladen or delivered from such ship or vessel, within the United States, but in open day, that is to say, between the rising and setting of the sun, except by special license from the collector of the port, and naval officer of the same, where there is one, for that purpose, nor at any time without a permit from the collector, and naval officer, if any, for such unloading or delivery; and if any goods, wares or merchandise shall be unladen or delivered from any such ship or vessel, contrary to the direction aforesaid, or any of them, the master or person having the charge or command of such ship or vessel, and every other person who shall knowingly be concerned, or aiding therein, or in removing, storing, or otherwise securing the said goods, wares or merchandise, shall forfeit and pay, each and severally, the sum of four hundred dollars for each offence, and shall be disabled from holding any office of trust or profit under the United States, for a term not exceeding seven years; and it shall be the duty of the collector of the district, to advertise the names of all such persons in a newspaper, printed in the state in which he resides, within twenty days after each respective conviction; and all goods, wares or merchandise, so unladen or delivered, shall become forfeited, and may be seized by any of the officers of the customs; and where the value thereof, according to the highest market price of the same, at the port or district where landed, shall amount to four hundred dollars, the vessel, tackle, apparel and furniture shall be subject to like forfeiture and seizure.

Goods to be landed in the daytime, (and not without a permit.

Penalty.

Sec. 51. *And be it further enacted*, That no goods, wares or merchandise, brought in any ship or vessel, from any foreign port or place, requiring to be weighed, gauged, or measured, in order to ascertain the duties thereupon, shall, without the consent of the proper officer, be removed from any wharf, or place, upon which the same may be landed or put, before the same shall have been so weighed, gauged or measured, and if spirits, wines, teas or sugars, before the proof or quality and quantity thereof is ascertained and marked thereon, by or under the direction of the proper officer for that purpose; and if any such goods, wares or merchandise shall be removed from such wharf or place, unless with the consent of the proper officer had and obtained, before the same shall have been so weighed, gauged or measured, and if spirits, wines, teas or sugars, before the proof or quality and quantity shall have been so ascertained and marked, the same shall be forfeited, and may be seized by any officer of the customs or inspection.

Goods not to be removed before being weighed, &c.

On pain of forfeiture.

Sec. 52. *And be it further enacted*, That all goods, wares and merchandise, of which entry shall have been made incomplete, or without the specification of particulars, either for want of the original invoice or invoices, or for any other cause, or which shall have received damage during the voyage, to be ascertained by the proper officers of the port or district in which the said goods, wares or merchandise shall arrive, shall be conveyed to some warehouse or storehouse, to be designated by the collector, in the parcels or packages containing the same, there to remain with due and reasonable care, at the expense and risk of the owner or consignee, under the care of some proper officer, until the

In case of incomplete entry, and of damage, goods to be stored.

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Mode of appraising goods and ascertaining damage.

particulars, cost or value, as the case may require, shall have been ascertained either by the exhibition of the original invoice or invoices thereof, or by appraisement, at the option of the owner, importer or consignee, in manner hereafter provided, and until the duties thereon shall have been paid, or secured to be paid, and a permit granted by the collector for the delivery thereof. And for the appraisement of goods, wares and merchandise, not accompanied with the original invoice of their cost, or to ascertain the damage thereon received during the voyage, it shall be lawful for the collector, and upon request of the party, he is required to appoint one merchant, and the owner, importer or consignee to appoint another, who shall appraise or value the said goods, wares or merchandise accordingly, which appraisement shall be subscribed by the parties making the same, and be verified on oath or affirmation before the said collector; which oath or affirmation shall be in the form following, to wit:—

Appraisers' oath.

We (insert the names of the persons) appointed by the collector of (here insert the name of the port or district) and (here insert the name or names of the importer or importers) to ascertain the contents, and appraise the value of the merchandise contained in the several packages described in the within or annexed entry or account, do solemnly, sincerely and truly swear (or affirm) that the several articles detailed in the annexed appraisement, subscribed with our names, contains a full and true account of all the merchandise whatsoever contained in the several packages mentioned in such entry or account, and that the several prices by us affixed to each article are, to the best of our skill and judgment, the true and actual value or cost thereof, at the place of exportation. So help us God.

Duty of appraisers as to damaged goods.

And in respect to articles that have been damaged, during the voyage, as aforesaid, whether subject to a duty ad valorem, or which are chargeable with a specific duty, either by number, weight or measure, the appraisers as aforesaid shall in like manner ascertain and certify, to what rate or per centage, the said goods, wares or merchandise are damaged, and the rate of per centage of damage, so ascertained and certified, shall be deducted from the original amount, subject to a duty ad valorem, or from the actual or original number, weight or measure on which specific duties would have been computed: *Provided*, that no allowance for the damage on any goods, wares and merchandise, that have been entered, and on which the duties have been paid or secured to be paid, and for which a permit has been granted to the owner or consignee thereof, and which may on examining the same prove to be damaged, shall be made, unless proof to ascertain such damage shall be lodged in the custom-house of the port or place where such goods, wares or merchandise have been landed, within ten days after the landing of such merchandise. And every person who shall be appointed to ascertain the damage during the voyage, of any goods, wares or merchandise, shall take and subscribe an oath or affirmation in the following form, to wit:

Allowance for damage.

No allowance for damage, unless proof be lodged within ten days, after landing.

Oath of persons appointed to ascertain damages.

We (insert the names of the persons) appointed by the collector of the district of (insert the name of the district) and (insert the name or names of the owner or owners, consignee or consignees) to ascertain and appraise the damage sustained on merchandise imported by (insert the name or names of the importer or importers) in the (insert denomination and name of the vessel) whereof (insert the name) is master, from (insert the port or place from which imported) do solemnly, sincerely and truly swear (or affirm) that we have carefully examined the several packages hereafter enumerated and described, and find the several articles of merchandise, as particularly detailed, contained in the said packages, to have received damage, as we believe, during the voyage of importation, and that the allowance, by us made for such damage, is to the best of our skill and judgment, just.

So help us God.



SEC. 53. And he it further enacted, That it shall be lawful for the collector of any district at which any ship or vessel may arrive, and immediately on her first coming within such district, and for the surveyor of any port where such ship be, to put and keep on board such ship or vessel, whilst remaining within such district, or in going from one district to another, one or more inspectors to examine the cargo, or contents of such ship or vessel, and to superintend the delivery thereof, or of so much thereof as shall be delivered within the United States, and to perform such other duties, according to law, as they shall be directed by the said collector, or surveyor, to perform for the better securing the collection of the duties: *Provided*, that collectors only shall have power to put on board ships or vessels, inspectors to go from one district to another; and the said inspector or inspectors, shall make known to the person having the charge or command of such ship or vessel, the duties he or they, is or are, so to perform; and shall suffer no goods, wares or merchandise of any nature or kind whatsoever to be landed or unladen, or otherwise taken or removed from such ship or vessel, without a permit in writing from the collector of the port, and naval officer thereof, where any, first had and granted for that purpose, and the inspector aforesaid shall enter in a book, to be by him or each of them kept according to such a form as shall be prescribed or approved by the collector, the name or names of the person or persons in whose behalf such permits are granted, together with the particulars therein specified, and the marks, numbers, kinds and description of the respective packages, which shall be unladen pursuant thereto, and shall keep a like account in the said book of all goods, wares and merchandise, which not having been entered within the time limited by this act, or for some other cause, have been sent to the store or warehouse, provided for the reception of such goods, wares or merchandise; which book shall be delivered to the surveyor in the month of January in every year for his inspection, and immediately after such inspection, be transmitted by the surveyor, with such observations as he may think necessary thereon, to the collector, to be deposited in his office. And it shall be the duty of the said inspector or inspectors, to attend to the delivery of the cargo or cargoes under their care, at all times when the unloading or delivery of goods, wares and merchandise is lawful, particularly from the rising till the setting of the sun on each day, Sundays and the Fourth day of July in each year excepted; for which purpose they shall constantly attend and remain on board the vessel or vessels, the deliveries from which they are to superintend, or at any other stations where their inspection is necessary. And said inspector or inspectors shall not quit such stations or places, without the leave of the surveyor of the port first had and obtained for that purpose, who shall appoint another inspector (if he shall judge it necessary) to supply the place of such inspector or inspectors, during his or their absence; and any inspector, who shall neglect or in any manner act contrary to the duties hereby enjoined, shall for the first offence forfeit and pay the sum of fifty dollars, and for the second offence, shall be displaced, and be incapable of holding any station of trust or profit under the revenue laws of the United States, for a term not exceeding seven years. And no inspector or inspectors shall perform any other duties or service, on board any ship or vessel, the superintendence of which is committed to him or them, for any person or persons whatever, other than what is required by this act, under the penalty of being disabled from acting any longer as an inspector of the customs; and the wages or compensation of such inspector or inspectors, as may proceed from one district to another, shall be defrayed by the master or person having the charge or command of the ship or vessel committed to his or their care; and every inspector or other officer of the revenue, while performing any duty on board any ship or vessel, not in a port of the United

Inspectors may
be put on board
vessels.

Duty of in-
spectors.

Penalty on
misbehaviour.

Wages of in-
spectors, by
whom to be
paid.

To be supplied with provisions and accommodations on board of vessels.

States, discharging her cargo, shall be entitled to receive from the master of such ship or vessel, such provisions and accommodations as are usually supplied to passengers, or as the state and condition of such ship or vessel will admit, on receiving therefor fifty cents per diem; and any master of any ship or vessel, who shall refuse provisions and reasonable accommodations as aforesaid, shall forfeit and pay one hundred dollars.

Officers of the customs may go on board of vessels, and their duties therein.

SEC. 54. *And be it further enacted*, That it shall be lawful for all collectors, naval officers, surveyors, inspectors, and the officers of the revenue cutters, herein after mentioned, to go on board of ships or vessels in any port of the United States, or within four leagues of the coast thereof, if bound to the United States, whether in or out of their respective districts, for the purposes of demanding the manifests aforesaid, and of examining and searching the said ships or vessels; and the said officers respectively shall have free access to the cabin and every other part of a ship or vessel; and if any box, trunk, chest, cask, or other package shall be found in the cabin, steerage or forecabin of such ship or vessel, or in any other place separate from the residue of the cargo, it shall be the duty of the said officer to take a particular account of every such box, trunk, chest, cask or other package, and of the marks and numbers thereof, if any there be, and a description thereof, and if he shall judge proper, to put a seal or seals on every such box, trunk, chest, cask or other package; and such an account and description shall be by him forwarded without delay to the collector of the district to which such ship or vessel is bound. And if upon her arrival at the port of her entry, the boxes, trunks, chests, casks, or other packages so described, or any of them, shall be missing, or if the seals put thereon be broken, the master or commander of such ship or vessel shall forfeit and pay for every such box, trunk, chest, cask or other package so missing, or of which the seals shall be broken, the sum of two hundred dollars. And it shall also be lawful for the inspectors who may be put on board of any ship or vessel, (and they are hereby required and enjoined so to do) to secure after sunset in each evening, or previous to their quitting the ship or vessel, the hatches and other communications with the hold of such ship or vessel, or any other part thereof he or they may judge necessary, with locks or other proper fastenings, which locks or other fastenings shall not be opened, broken, or removed until the morning following, or after the rising of the sun, and in the presence of the inspector or inspectors, by whom the same shall have been so affixed, except by special license from the collector of the port, and naval officer thereof, if any, for that purpose, first had and obtained. And if the said locks or other fastenings, or any of them shall be broken or removed, during the night or before the said rising of the sun, or without the presence of the said inspector or inspectors, or without such license first had and obtained, or if any goods or packages shall be clandestinely landed, notice thereof shall be immediately given by the inspector or inspectors, to the collector and naval officer of the district, port or place, where the vessel may be; and the master, or other person having the charge or command of any such ship or vessel, shall, for each or every of the offences aforesaid, forfeit and pay the sum of five hundred dollars.

Further duty of inspectors.

Inspectors to make returns of their deliveries to the collector and naval officer.

SEC. 55. *And be it further enacted*, That when the delivery of goods, wares and merchandise from on board of any ship or vessel, shall have been completed, copies of the accounts or entries which shall have been kept or made thereof, by the officer or officers who shall have been charged with the said deliveries, shall be returned to the collector of the district and naval officer of the same, if any there be, within three days after such delivery hath been completed, if at the port where such officer or officers reside, and if at any other port, as soon as the nature of the



case will admit, not exceeding fifteen days; and the accounts or entries to be returned as aforesaid, shall comprise all deliveries made pursuant to permits as aforesaid, and all packages or merchandise sent to the public stores; also each and every package remaining on board of such ship or vessel, for the purpose of being exported therein, to a foreign port or place, or to some other district of the United States. And the returns of the inspectors, to be made as aforesaid, shall be according to the following form—namely:

Return of merchandise, unladen under my inspection, pursuant to permits for that purpose, from on board the (insert the names of the vessel and master) from (insert the port from which the vessel arrived.)

Form of inspector's return.

When delivered or sent to store.	Dates of permits.	Marks.	Numbers.	Description of packages.	Contents.	To whom delivered, or whether sent to store, or remaining on board.	Remarks.

And the returns to be made as aforesaid, shall be signed by the inspectors respectively, under whose superintendence the deliveries shall have been made; and after examination, and on being found correct, said returns shall be countersigned or certified by the surveyor of the port, if any there be, at the port where the deliveries have been made; and the said returns shall be transmitted by him to the naval officer, if any there be, who shall compare the same with the manifests and entries in his possession; and if any difference shall appear, the particulars thereof shall be noted by endorsement on the said returns, and if no difference shall appear, it shall be so noted by like endorsements,—and transmit the same to the collector of the district; and on being returned to the collector, it shall be by him compared with the manifests and entries of such goods, wares or merchandise, which shall have been made by the owner or owners, consignee or consignees, or his or their factor or agent; and if any difference shall appear, the same shall be noted by endorsement on such manifests, specifying the particulars thereof; and if no difference shall appear, it shall be noted by like endorsement, that the delivery hath corresponded with the entry or entries thereof; which endorsement or memorandum shall, in each case, be subscribed by the officer by whom such comparison shall have been made.

Inspector's return to be examined by the surveyor, naval officer and collector.

Sec. 56. And be it further enacted, That if at the expiration of fifteen working days, after the time within which the report of the master, or person having the charge or command of any ship or vessel, so required to be made to the collector of a district as aforesaid, there shall be found on board, any goods, wares and merchandise, other than shall have been reported for some other district, or some foreign port or place, the said inspector or inspectors shall take possession thereof. *Provided*, that with the consent of the owner or consignee of any goods, wares or merchandise, or with the consent of the owner or master of the vessel, in which the same may be imported, the said goods, wares or merchandise may be taken possession of, at any time, after five days notice to the collector of the district. And all goods, wares or merchandise, taken as aforesaid, shall be delivered pursuant to the order of the

Goods remaining on board after fifteen days to be taken into inspector's possession.

collector of the district; for which a certificate or receipt shall be granted in the following form:

District of
Port of

Form of receipt therefor.

I certify, that there has been received into store, from on board the (insert the denomination and name of the vessel) whereof (insert the name) is master, from (insert the port or place where from) the following merchandise, to wit: (here enumerate the several packages, their denominations, marks and numbers, and if articles in bulk, the quantity) lodged by (insert the name) inspector, under whose care the said vessel was unladen.

Such goods to be kept for nine months, and then sold.

And the said goods shall be kept with due and reasonable care, at the charge and risk of the owner or owners thereof, for the term of nine months, and if within that time, no claim be made for the same, the said collector shall procure an inventory of the said goods, and an appraisement thereof, to be made and to be verified on oath or affirmation by two or more reputable merchants before the said collector, and to remain with him; and said collector shall afterwards cause the said goods to be sold at public auction (previously causing the same to be advertised in one or more of the public newspapers, printed at or nearest to the port or place, where the sale is to be, for the space of one month) and retaining the duties thereon agreeably to such inventory and appraisement, and all charges thereon, shall pay the overplus, if any there be, into the treasury of the United States, there to remain for the use of the owner or owners, who shall, upon due proof of his, her, or their property, be entitled to receive the same; for which purpose the collector shall transmit with the said overplus a copy of the inventory, appraisement, and account of sales, specifying the marks, numbers, and descriptions of the packages sold, their contents, the name of the vessel and master, in which, and of the port or place from whence they were imported, and the time when, and the name of the person, or persons to whom the said goods were consigned in the manifest; and the receipt or certificate of the collector shall exonerate the master or person having the charge or command of any ship or vessel, in which such goods, wares and merchandise were imported, from all claim of the owner or owners thereof: *Provided*, that nothing herein contained shall be understood to prohibit the sale of such quantities of goods, stored as aforesaid, as may be necessary to discharge the duties thereon, at the time or times, when such duties shall become due and payable. *And provided*, that where any entry shall have been duly made of such goods, the same shall not be appraised; and that where such goods are of a perishable nature, they shall be sold forthwith: *Provided further*, that the said limitation of fifteen days shall not extend to ships or vessels laden with salt or coal; but if the said master or owner of any such ship or vessel, so laden with salt or coal, requires a longer time to discharge her cargo, the wages, or compensation of the inspector, for every day's attendance, exceeding the said fifteen days, shall be paid by the said master or owner—and thereupon, the collector is hereby authorized and required to allow such longer time as in his judgment he may think necessary to discharge such cargo, not exceeding fifteen days. And if by reason of the delivery of the cargo, in several districts, more than the said term of fifteen working days shall in the whole be spent therein, the wages or compensation of the inspector or inspectors who may be employed on board of any ship or vessel, in respect to which such term may be so exceeded, shall, for every day of such excess, be paid by the said master or owner; and it shall be the duty of such inspectors, previously to the clearance of such ship or vessel, to render an exact account to the collector, of all such compensations as shall have been paid, or shall be due and payable by such master or owner.

The overplus, after the duties and charges are retained, to be paid into the Treasury.

Provisoers.

Wages of inspectors, exceeding fifteen days, to be paid by the master or owner.

Sec. 57. *And be it further enacted*, That if any package whatever, which shall have been reported as aforesaid, shall be wanting, and not found on board such ship or vessel, or if the goods, wares and merchandise, on board such ship or vessel, shall otherwise not agree with the report or manifest delivered by the master or other person having the charge or command of any such ship or vessel, in every such case the master, or other person having such charge or command, shall forfeit and pay the sum of five hundred dollars: *Provided nevertheless*, that if it shall be made appear to the satisfaction of the collector, naval officer and surveyor, or to the major part of them, where those officers are established at any port, or to the satisfaction of the collector alone, where neither of the said others is established, or, in case of trial for the said penalty, to the satisfaction of the court, that no part whatever of the goods, wares or merchandise of such ship or vessel has been unshipped, landed or unladen since it was taken on board, except as shall have been specified in the said report, or manifest, and pursuant to permits as aforesaid, or that the said disagreement is by accident or mistake, in such case the penalty aforesaid shall not be inflicted; but in all cases as aforesaid the master, or person having the charge or command of any ship or vessel, shall be required and shall make a post entry or addition to the report or manifest by him delivered, of any and all goods, wares or merchandise omitted to be included and reported in such manifest; and it shall not be lawful to grant a permit to unlade any such goods, wares or merchandise so omitted, before such post entry, or addition to such report or manifest, has been made.

Penalty on the master, when the cargo does not agree with the report or manifest.

Post entry to be made in such cases.

Sec. 58. *And be it further enacted*, That the following allowances shall be made for the drafts and tare of the articles subject to duty, by weight, on the importation and exportation thereof, that is to say—for draft on any quantity of one hundred weight, of one hundred and twelve pounds, one pound; on any quantity above one and not exceeding two hundred weight, two pounds; on any quantity above two and not exceeding three hundred weight, three pounds; on any quantity above three and not exceeding ten hundred weight, four pounds; on any quantity above ten and not exceeding eighteen hundred weight, seven pounds; on any quantity above eighteen hundred weight, nine pounds.

Allowances for draft,

For tare on every whole chest of bohea tea, seventy pounds; on every half chest, thirty-six pounds; on every quarter chest, twenty pounds; on every chest of hyson or other green teas, the gross weight of which shall be seventy pounds, or upwards, twenty pounds; on every box of other tea, not less than fifty, or more than seventy pounds, gross, eighteen pounds; if eighty pounds gross, twenty pounds; and from eighty pounds gross and upwards, twenty-two pounds; which tares shall include rope, canvas and other coverings; on all other boxes of tea, according to the invoice or actual weight thereof; on coffee in bags, two per cent; in bales, three per cent; in casks, twelve per cent; on sugar other than loaf sugar in casks, twelve per cent; in boxes, fifteen per cent; in bags or mats, five per cent; on cocoa in casks, ten per cent; in bags, one per cent; on pimento in casks, sixteen per cent; in bags, three per cent; on cheese in hampers or baskets, ten per cent; in boxes, twenty per cent; on candles, in boxes, eight per cent; on chocolate, in boxes, ten per cent; on cotton, in bales, two per cent; in seroons, six per cent; on glauber salts in casks, eight per cent; on indigo in barrels, twelve per cent; in other casks, fifteen per cent; in seroons, ten per cent; in bags or mats, three per cent; on nails in casks, eight per cent; on pepper in casks, twelve per cent; in bales, five per cent; in bags, two per cent; sugar candy in boxes, ten per cent; segars in casks or boxes, eighteen per cent; soap in boxes, ten per cent; shot in casks, three per cent; twine in casks, twelve per cent; in bales, three per cent; on all other goods according to the invoice thereof, or actual weight—*Provided al-*

and for tare.

ways, that where the original invoices of any of the said articles are produced, at the time of making entry for such articles, and the tare or tares appear therein, it shall be lawful for the collector and naval officer, (where there is one,) if they see fit, with the consent of the importer or importers, consignee or consignees, to estimate the said tare or tares, according to such invoice, but if not determined at the time of entry, the tare or tares as above shall be granted and allowed.

Allowance for leakage and breakage.

SEC. 59. *And be it further enacted*, That there be an allowance of two per cent, for leakage, on the quantity which shall appear by the gauge to be contained in any cask of liquors, subject to duty by the gallon; and ten per cent. on all beer, ale and porter in bottles, and five per cent. on all other liquors in bottles, to be deducted from the invoice quantity, in lieu of breakage, or it shall be lawful to compute the duties on the actual quantity to be ascertained by tale at the option of the importer, to be made at the time of entry.

Vessels arriving in distress at ports, to which they are not bound, may be unloaded free from duty.

SEC. 60. *And be it further enacted*, That if any ship or vessel from any foreign port or place, compelled by distress of weather, or other necessity, shall put into any port or place of the United States, not being destined for the same, and if the master, or other person having the charge or command of any such ship or vessel, together with the mate or person next in command, shall, within twenty-four hours after her arrival, make protest in the usual form upon oath or affirmation, before a notary public or other person duly authorized, or before the collector of the district, where the said ship or vessel shall so arrive, who is hereby empowered to administer the same, setting forth the cause, or circumstance of such distress, or necessity, which protest, if not made before the collector, shall be produced to him, and to the naval officer (if any there be) and a copy thereof lodged with him or them. And the master, or other person aforesaid, shall also, within forty-eight hours after such arrival, make report in writing to the said collector, of the said ship or vessel and her cargo, as is directed hereby to be done in other cases. And if it shall be made appear to the said collector, by the certificate of the wardens of the port, or other officers usually charged with, and accustomed to ascertain the condition of ships or vessels arriving in distress, if any such there be, or by the certificate of any two reputable merchants, to be named for that purpose by the said collector, if no such wardens, or other officers duly qualified there be, that there is a necessity for unloading the said ship or vessel, the said collector and naval officer (where any) shall grant a permit for that purpose, and shall appoint an inspector or inspectors to oversee such unloading, who shall keep an account of the same, to be compared with the report made by the master, or other person having the charge or command of such ship or vessel: and all goods, wares and merchandise so unladen, shall be stored under the direction of the said collector, who, upon request of the master or person having the charge or command of such ship or vessel, or of the owner or owners thereof, shall, together with the naval officer, where there is one, and alone where there is none, grant permission to dispose of such part of the said cargo as may be of a perishable nature (if any there be) or as may be necessary to defray the expenses attending such ship or vessel, and her cargo: *Provided*, that entry shall be made therefor, and the duties thereon as in other cases shall be first paid, or secured to be paid: *And provided*, that in case the delivery of the cargo do not agree with the report thereof, made by the master or other person having the charge or command of such ship or vessel, and if the difference, or disagreement be not satisfactorily accounted for in manner prescribed by this act, the master, or other person having the charge or command of such ship or vessel, shall be liable to such penalties as in other like cases are by this act prescribed. And the said goods, wares and merchandise, or the remainder

Cargo to be stored.

Part of the cargo may be sold.

Penalty on a variance between the delivery and report.

thereof, which shall not be disposed of as aforesaid, may afterwards be reladen on board the said ship or vessel, under the inspection of the officer who superintended the landing thereof, or other proper person; and the said ship or vessel may proceed with the same to the place of her destination, free from any other charge than for the storing and safe-keeping of the said goods, and fees to the officers of the customs as in other cases.

The cargo may be reladen.

SEC. 61. *And be it further enacted*, That the ad valorem rates of duty upon goods, wares and merchandise at the place of importation, shall be estimated by adding twenty per cent. to the actual costs thereof, if imported from the Cape of Good Hope, or from any place beyond the same; and ten per cent. on the actual cost thereof, if imported from any other place, or country, including all charges, commissions, outside packages and insurance only excepted.

Mode of estimating ad valorem rates of duty.

That all foreign coins and currencies shall be estimated at the following rates: each pound sterling of Great Britain, at four dollars and forty-four cents; each livre tournois of France at eighteen and a half cents; each florin or guilder of the United Netherlands, at forty cents; each mark banco of Hamburg, at thirty-three and one third cents; each rix dollar of Denmark, at one hundred cents; each rial of plate and each rial of vellon of Spain, the former at ten cents, the latter at five cents each; each milree of Portugal, at one dollar and twenty-four cents; each pound sterling of Ireland, at four dollars and ten cents; each tale of China, at one dollar and forty-eight cents; each pagoda of India, at one dollar and ninety-four cents; each rupee of Bengal, at fifty-five cents and one half; and all other denominations of money, in value, as nearly as may be to the said rates, or the intrinsic value thereof, compared with money of the United States: *Provided*, that it shall be lawful for the President of the United States, to cause to be established fit and proper regulations for estimating the duties on goods, wares and merchandise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government.

Estimation of foreign coins and currencies.

SEC. 62. *And be it further enacted*, That all duties on goods, wares or merchandise imported, shall be paid or secured to be paid, before a permit shall be granted for landing the same; and where the amount of such duty on goods imported in any ship or vessel, on account of one person only, or of several persons jointly interested, shall not exceed fifty dollars, the same shall be immediately paid, and if it exceed that sum, shall, at the option of the importer or importers, be paid or secured to be paid by bond, if on articles the produce of the West-Indies (salt excepted) the one half in three, and the other half in six calendar months; on salt in nine calendar months; on Madeira and all other wines, in twelve calendar months; on all goods, wares or merchandise (other than wines, salt and teas imported from Europe) one third in eight, one third in ten, and one third in twelve calendar months; and all goods, wares and merchandise, other than wines, salt and teas, imported from any other place than Europe and the West-Indies, one half in six months, one quarter in nine months, and the other quarter in twelve months from the date of each respective importation; which bond or bonds shall include one or more sureties, to the satisfaction of the collector of the district where the said duties shall accrue; and on teas imported from China or Europe, it shall be at the option of the importer or importers (to be determined at the time of making entry therefor) either to secure the duties thereon, on the same terms and stipulations as on other goods, wares and merchandise imported, or to give his or her, or their bond to the collector of the district, where any such teas shall be landed, in double the amount of the duties thereupon, with condition for the payment of the said duties in two years, from the date of such

Duties to be paid or secured before goods are landed.

Terms of credit for duties.

Particular provision respecting teas imported from China or Europe.

Teas imported
from China.

bond; which bond shall be accepted by such collector without surety upon the terms following, that is to say: the teas, for the duties whereof such bond shall be accepted, shall be deposited at the expense and risk of the said importer or importers, in one or more storehouse or storehouses, as the case may require, to be agreed upon between the said importer and the inspector, or other officer of inspection of the revenue, for the port where the said teas shall be landed; and upon every such storehouse, the said inspector, or officer of inspection, shall cause to be affixed two locks, the key of one of which locks shall be kept by such importer, his or her agent, and the key of the other of which locks shall be kept by such inspector, or by such other person as he shall depute or appoint in his behalf, whose duty it shall be to attend at all reasonable times, for the purpose of delivering the said teas out of the said storehouse or storehouses; but no delivery shall be made of any of the said teas without a permit in writing, under the hand of the collector of the port and naval officer of the same, where such tea is landed; and in order to the obtaining of such permit, it shall be necessary that the duties upon the teas, for which the same shall be required, be first paid or secured to be paid to the said collector in the manner following; that is to say: the said party or parties shall give bond with one or more surety or sureties to the satisfaction of the said collector, in double the amount of the duties upon the quantity of teas in each case to be delivered, with condition for the payment of the said duties, if the same shall not exceed one hundred dollars, in four months; if it shall exceed one hundred dollars, and not exceed five hundred dollars, in eight months; or if the same shall exceed five hundred dollars, in twelve months: *Provided always*, that the time to be allowed for the payment of the duties upon any parcel of teas to be delivered, shall not be such as to extend the credit for such duties beyond the term of two years, originally allowed upon the depositing of the said teas: *And provided*, that if the duties on any parcel of teas, which shall have been deposited as aforesaid, shall not have been paid, or secured to be paid, in manner last specified, within the term of two years, according to the condition of the obligation, to be first given to the collector of the district within which the same shall have been landed, it shall be the duty of the said collector to cause so much of the said teas as may be necessary, to be sold at public auction, and retaining the sum which shall not have been so paid or secured to be paid of the said duties, together with the expenses of safe-keeping and sale of the said teas, shall return the overplus, if any, to the owner, or owners thereof, his, her, or their agent or lawful representative; and the amount of each bond or bonds, taken for the duties on any teas delivered, after a deposit as aforesaid, shall be endorsed immediately on the original bond given by the importer or importers of the said teas, specifying the date, quantity and quality of the teas delivered, the amount of duty secured thereon, by whom, and the term of payment. *And provided*, that it shall be lawful for the collector, in lieu of sureties, as required on any bond given for securing the duties on any goods, wares and merchandise imported, to accept of a deposit of so much of the said goods, as shall in his judgment be sufficient security for the amount of the duties for which the bond shall have been given, and the charge of safe-keeping and sale of the goods so deposited, which shall be kept by the said collector, with due and reasonable care, at the expense and risk of the party or parties on whose account they have been so deposited, until the sum specified in such bond shall have become due; at which time, if such sum shall not be paid, so much of the said deposited goods as may be necessary, shall be sold at public sale, and the proceeds thereof, after deducting the charges of safe-keeping and sale thereof, shall be applied to the payment of such sum, rendering the overplus arising on such sale, and the residue of the goods so deposited,

The collector
may receive a
deposit of goods
in lieu of sure-
ties.

if any there be, to the person or persons by whom such deposit shall have been made, or to his, her, or their agent, or lawful representative: and all bonds directed to be given by virtue of this, or any other act, for monies or duties to be paid, or services to be performed for the United States, shall be taken in the name of the United States of America: *Provided nevertheless*, that no person whose bond has been received, either as principal or surety for the payment of duties, or for whom any bond has been given by an agent, factor or other person, in pursuance of the provisions herein contained, and which bond may be due and unsatisfied, shall be allowed a future credit for duties until such bond be fully paid or discharged. And to prevent frauds arising from collusive transfers, it is hereby declared, that all goods, wares or merchandise imported into the United States, shall, for the purposes of this act, be deemed and held to be the property of the persons to whom the said goods, wares or merchandise may be consigned, any sale, transfer or assignment, prior to the entry and payment or securing the payment of the duties on the said goods, wares and merchandise, and the payment of all bonds then due and unsatisfied by the said consignee, to the contrary notwithstanding. And the form of the bond to be taken for securing the payment of duties shall be as follows:

Know all men by these presents, that we (here insert the name of the importer or consignee, or if by an agent the name of such agent, and of the importers or consignees and the sureties, their place of abode and occupation) are held and firmly bound unto the United States of America, in the sum of to be paid to the said United States; for payment whereof, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals; dated this day of in the year of the independence of the said United States, and in the year of our Lord, one thousand

The condition of this obligation is such, that if the above bounden (here insert the principal or agent for such principal and the sureties) or either of them, or either of their heirs, executors or administrators, shall, and do, on or before the day of next, well and truly pay or cause to be paid, unto the collector of the customs for the district of for the time being, the sum of or the amount of the duties to be ascertained as due, and arising on certain goods, wares and merchandise, entered by the above bounden (insert the name of the importer or consignee, or agent for such importer or consignee) as imported in the master from as per entry, dated then the above obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered)
in the presence of)

Sec. 63. *And be it further enacted*, That the duties imposed by law on the tonnage of any ship or vessel shall be paid to the collector, at the time of making entry of such ship or vessel; and it shall not be lawful to grant any permit or to unlade any goods, wares or merchandise whatever from such ship or vessel, until the said tonnage duty is first paid:— And the register, or other document in lieu thereof, together with the clearance and other papers, granted by the officers of the customs to such ship or vessel at her departure from the port or place from whence she may have arrived (Mediterranean passports excepted) shall previous to such entry be produced to the collector, with whom such entry is to be made, and shall remain in his office; and on the clearance of such ship or vessel, the register and other documents shall be returned to the master or owner of such ship or vessel.

Sec. 64. *And be it further enacted*, That to ascertain the tonnage of any ship or vessel, the surveyor or such other person as shall be appointed

Bonds to be taken in the name of the U. States of America.

Debtors to the revenue not to receive a new credit.

Consignee to be considered as the owner.

Form of bond for securing duties.

Tonnage duties to be paid on making entry, &c.

Certain ship's papers to be lodged with the collector on making entry.

Mode of ascer-
taining the ton-
nage of vessels.

by the collector of the district to measure the same, shall, if the said ship or vessel be double decked, take the length thereof from the fore part of the main stem, to the after part of the stern post, above the upper deck, the breadth thereof at the broadest part above the main wales, half of which breadth shall be accounted the depth of such vessel, and shall then deduct from the length, three fifths of the breadth, multiply the remainder by the breadth, and the product by the depth, and shall divide this last product by ninety-five, the quotient whereof shall be deemed the true contents or tonnage of such ship or vessel. And if such ship or vessel be single decked, the said surveyor or other person, shall take the length and breadth as above directed, in respect to a double decked ship or vessel, shall deduct from the said length three fifths of the breadth, and taking the depth from the under side of the deck plank to the ceiling in the hold, shall multiply and divide, as aforesaid, and the quotient shall be deemed the tonnage of such ship or vessel.

Bonds for du-
ties to be put in
suit immediate-
ly after they be-
come due.

Sec. 65. *And be it further enacted*, That where any bond for the payment of duties shall not be satisfied on the day it may become due, the collector shall, forthwith and without delay, cause a prosecution to be commenced for the recovery of the money thereon by action or suit at law, in the proper court having cognizance thereof; and in all cases of insolvency, or where any estate in the hands of the executors, administrators or assignees, shall be insufficient to pay all the debts due from the deceased, the debt or debts due to the United States, on any such bond or bonds, shall be first satisfied; and any executor, administrator, or assignees, or other person, who shall pay any debt due by the person or estate from whom, or for which, they are acting, previous to the debt or debts due to the United States from such person or estate being first duly satisfied and paid, shall become answerable in their own person and estate, for the debt or debts so due to the United States, or so much thereof as may remain due and unpaid; and actions or suits at law may be commenced against them for the recovery of the said debt or debts, or so much thereof as may remain due and unpaid, in the proper court having cognizance thereof: *Provided*, that in all cases in which suits or prosecutions shall be commenced for the recovery of duties or pecuniary penalties prescribed by the laws of the United States, the person or persons against whom process may be issued, shall and may be held to special bail, subject to the rules and regulations which prevail in civil suits in which special bail is required: *And provided also*, that if the principal in any bond, which shall be given to the United States for duties on goods, wares or merchandise imported, or other penalty, either by himself, his factor, agent, or other person for him, shall be insolvent, or if such principal being deceased, his, or her estate and effects, which shall come to the hands of his or her executors, administrators or assignees, shall be insufficient for the payment of his or her debts, and if in either of the said cases, any surety on the said bond or bonds, or the executors, administrators or assignees of such surety shall pay to the United States the money due upon such bond or bonds, such surety, his or her executors, administrators or assignees, shall have and enjoy the like advantage, priority or preference for the recovery and receipt of the said monies out of the estate and effects of such insolvent, or deceased principal, as are reserved and secured to the United States; and shall and may bring and maintain a suit or suits upon the said bond or bonds in law or equity, in his, her, or their own name or names, for the recovery of all monies paid thereon. And the cases of insolvency mentioned in this section, shall be deemed to extend as well to cases in which a debtor, not having sufficient property to pay all his or her debts, shall have made a voluntary assignment thereof, for the benefit of his or her creditors, or in which the estate and effects of an absconding, concealed or absent debtor, shall have been attached by process

Such bonds
entitled to a
priority of satis-
faction in case
of insolvency,
&c.

See ante, pages
263, 515.

In suits for
duties or pecu-
niary penalties,
defendant may
be held to spe-
cial bail.

Surety paying
bond to have
priority, in case
of insolvency,
&c. of the prin-
cipal.

Meaning of
insolvency.

of law, as to cases in which an act of legal bankruptcy shall have been committed. And where suit shall be instituted on any bond for the recovery of duties due to the United States, it shall be the duty of the court, where the same may be pending, to grant judgment at the return term, upon motion, unless the defendant shall, in open court, the United States attorney being present, make oath or affirmation that an error has been committed in the liquidation of the duties demanded upon such bond, specifying the errors alleged to have been committed, and that the same have been notified in writing to the collector of the district, prior to the commencement of the return term aforesaid: whereupon, if the court be satisfied, that a continuance until the next succeeding term, is necessary for the attainment of justice, and not otherwise, a continuance may be granted until next succeeding term and no longer. And on all bonds upon which suits shall be commenced, an interest shall be allowed at the rate of six per cent. per annum, from the time when said bonds become due, until the payment thereof.

Judgment for duties to be rendered at the first term.

Interest to be allowed upon bonds.

Goods entered with a fraudulent invoice to be forfeited.

In case of suspicion thereof the goods shall be taken into possession by the collector; and proceedings thereupon.

See Wood v. United States, 16 Peters, 342.

Sec. 66. *And be it further enacted*, That if any goods, wares or merchandise, of which entry shall have been made in the office of a collector, shall not be invoiced according to the actual cost thereof, at the place of exportation, with design to evade the duties thereupon, or any part thereof, all such goods, wares or merchandise, or the value thereof, to be recovered of the person making entry, shall be forfeited; and in every case in which the said collector shall suspect that any such goods, wares or merchandise are not invoiced at a sum equal to that for which they have usually been sold in the place or country from whence they were imported, it shall be the duty of such collector to take the said goods, wares or merchandise into his possession, and retain the same with due and reasonable care, at the risk and expense of the owner or owners, consignee or consignees thereof, until their value at the time and place of importation shall be ascertained, by two reputable merchants, to be chosen and appointed as in the case of damaged goods, or goods not accompanied with an invoice, and until the duties arising, according to such valuation, shall be first paid, or secured to be paid, as required by this act in other cases of importation: *Provided*, that in case of a prosecution for the forfeiture aforesaid, such appraisement shall not be construed to exclude other proof upon the trial, of the actual and real cost of the said goods at the place of exportation.

Officers of the customs may open packages, on suspecting fraud.

Sec. 67. *And be it further enacted*, That it shall be lawful for the collector, naval officer, or other officer of the customs, after entry made of any goods, wares or merchandise, on suspicion of fraud, to open and examine, in the presence of two or more reputable merchants, any package, or packages thereof, and if upon examination they shall be found to agree with the entries, the officer making such seizure and examination, shall cause the same to be repacked and delivered to the owner or claimant forthwith; and the expense of such examination shall be paid by the said collector, or other officer, and allowed in the settlement of their accounts; but if any of the packages so examined shall be found to differ in their contents from the entry, then the goods, wares or merchandise contained in such package or packages shall be forfeited: *Provided*, that the said forfeiture shall not be incurred, if it shall be made appear to the satisfaction of the collector and naval officer of the district where the same shall happen, if there be a naval officer, and if there be no naval officer, to the satisfaction of the said collector, or of the court in which a prosecution for the forfeiture shall be had, that such difference proceeded from accident or mistake, and not from an intention to defraud the revenue.

Sec. 68. *And be it further enacted*, That every collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority to enter any ship or

They may search suspected places for goods.

vessel, in which they shall have reason to suspect any goods, wares or merchandise, subject to duty, are concealed, and therein to search for, seize, and secure any such goods, wares or merchandise; and if they shall have cause to suspect a concealment thereof in any particular dwelling-house, store, building, or other place, they or either of them shall upon proper application on oath, to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the daytime only) and there to search for such goods; and if any shall be found, to seize and secure the same for trial; and all such goods, wares and merchandise, on which the duties shall not have been paid, or secured to be paid, shall be forfeited.

Collector to have the custody of goods seized.

Penalty on buying or concealing goods liable to seizure.

Officers of the customs may make seizure out of their district.

They may plead the general issue.

Double costs.

Onus probandi to lie upon the claimant.

See *Wood v. United States*, 16 Peters, 342.

Penalty on resisting officers of the customs.

Special proviso as to the onus probandi.

Weighers, &c. to make returns in three days.

Sec. 69. *And be it further enacted*, That all goods, wares or merchandise which shall be seized by virtue of this act, shall be put into, and remain in the custody of the collector, or such other person as he shall appoint for that purpose, until such proceedings shall be had as by this act are required, to ascertain whether the same have been forfeited, or not; and if it shall be adjudged that they are not forfeited, they shall be forthwith restored to the owner or owners, claimant or claimants thereof; and if any person or persons shall conceal or buy any goods, wares or merchandise, knowing them to be liable to seizure by this act, such person or persons shall on conviction thereof, forfeit and pay a sum double the amount or value of the goods, wares or merchandise so concealed or purchased.

Sec. 70. *And be it further enacted*, That it shall be the duty of the several officers of the customs, to make seizure of, and secure any ship, or vessel, goods, wares or merchandise which shall be liable to seizure by virtue of this or any other act of the United States, respecting the revenue, which is now, or may hereafter be enacted, as well without as within their respective districts.

Sec. 71. *And be it further enacted*, That if any officer or other person, executing or aiding or assisting in the seizure of goods, shall be sued or molested for any thing done in virtue of the powers given by this act, or by virtue of a warrant granted by any judge, or justice, pursuant to law, such officer or other person may plead the general issue, and give this act and the special matter in evidence; and if in such suit the plaintiff is nonsuited, or judgment pass against him, the defendant shall recover double costs; and in actions, suits or informations to be brought, where any seizure shall be made pursuant to this act, if the property be claimed by any person, in every such case the *onus probandi* shall lie upon such claimant. And if any person shall forcibly resist, prevent, or impede any officer of the customs or their deputies, or any person assisting them, in the execution of their duty, such person so offending, shall for every such offence, be fined in a sum not exceeding four hundred dollars. And if any master, or other person having the charge or command of any ship or vessel coming into, or arriving at any port or place within the United States, shall obstruct or hinder, or shall be the cause or means of any obstruction or hindrance with such an intent, to any officer of the customs or revenue, in going on board such ship or vessel, for the purpose of carrying into effect any of the revenue laws of the United States, he shall forfeit for every such offence a sum not exceeding five hundred dollars, nor less than fifty dollars; but the *onus probandi* shall lie on the claimant only where probable cause is shown for such prosecution, to be judged of by the court before whom the prosecution is had.

Sec. 72. *And be it further enacted*, That the weighers, gaugers, and measurers, employed in the service of the revenue, shall, within three days after any vessel is discharged, make returns of the articles by them respectively weighed, gauged or measured, out of such vessel. And the

form of the return to be made by the weighers respectively, shall be as follows:

Return of (here insert the number of packages and contents) weighed from on board the (here insert the denomination and name of the vessel) whereof (insert the name) is master, from (insert the port or place from which arrived.)

Form of weigher's return.

Date of vessel's entry.	To whom consigned as per permit.	Marks.	Numbers.	Packages.	Contents and quality.	Weight.	Tare as allowed by law.	Tare as marked on the packages.	Amount of drafts.

District of
Port of

A. B., Weigher.

And the form of the return to be made by the gaugers respectively shall be as follows:

Return of (here insert the number of casks and packages) gauged from on board the (here insert the denomination and name of the vessel) whereof (insert the name) is master, from (insert the port or place from which arrived.)

Form of gauger's return.

Date of vessel's entry.	To whom consigned as per permit.	Marks.	Numbers.	Casks or packages.	Contents and quality as marked by the inspector of the revenue.	Gauge.	Wantage.	What casks empty or taken to fill up others.

District of
Port of

C. D., Gauger.

And the form of the return to be made by the measurers respectively, shall be as follows:

Return of the (here insert salt or coal as the case may be) measured from on board the (here insert the denomination and name of the vessel) whereof (insert the name) is master, from (insert the port or place from which arrived.)

Form of measurer's return.

Date of vessel's entry.	To whom consigned per permit.	Number of bushels in words at length.	Quality whether salt or coal.	Average weight of salt per bushel.

District of
Port of

E. F., Measurer.

And the said returns shall be made by the weighers, gaugers and measurers, in books to be prepared by them for that purpose, and kept in the custom houses.



Tables of fees and duties to be fixed up.

Receipts to be given for fees.

Penalty on officer of the customs taking unlawful fees.

Penalty on public gaugers, &c. in certain districts gauging, &c. for private persons, or making returns without having actually gauged, &c.

1826, ch. 82.

Penalty on inspectors, &c. neglecting their duty with respect to drawbacks.

In what monies the duties are to be paid.

Rates of foreign coins.

1793, ch. 43.
1801, ch. 76.

Proviso.

Drawback of duties to be allowed on exportation.

SEC. 73. *And be it further enacted*, That every collector, naval officer and surveyor, shall cause to be affixed, and constantly kept in some public and conspicuous place of his office, a fair table of the rates of fees and duties demandable by law, and shall give a receipt for the fees he shall receive, specifying the particulars whenever required so to do; and in case of failure therein, shall forfeit and pay one hundred dollars, to be recovered with costs, in any proper court having cognizance thereof, to the use of the informer; and if any officer of the customs shall demand or receive any greater, or other fee, compensation or reward, for executing any duty or service required of him by law, he shall forfeit and pay two hundred dollars for each offence, recoverable in manner aforesaid, for the use of the party aggrieved. And if any inspector, gauger, weigher or measurer, shall receive any gratuity, fee or reward for any services performed by virtue of this act, other than is by law allowed, or if any gauger, weigher or measurer, employed as such by the public, in the districts of Portsmouth, Salem and Beverly, Boston and Charlestown, Providence, New York, Philadelphia, Baltimore, Norfolk and Portsmouth, or Charleston, shall gauge, weigh or measure, any article or articles other than shall be directed by the proper officer in order to ascertain the duties to be received, or the drawbacks to be allowed thereon, or shall make a return of the weight, gauge or measure of any merchandise laden, or to be laden, on board any ship or vessel for the benefit of drawback upon exportation, without having actually weighed, gauged or measured the same, as the case may require, after such merchandise shall have been notified to the collector and entered for exportation, they shall for the first offence forfeit and pay the sum of fifty dollars, and for the second offence shall forfeit two hundred dollars, and be discharged from the public service; and if any inspector or other officer of the customs shall certify the shipment of any merchandise entitled to drawback on exportation, without having duly inspected and examined the same, after he shall have received the permit for lading such merchandise, or, if the amount of such drawback shall be estimated according to weight, gauge or measure, until such merchandise shall be first weighed, gauged or measured, as the case may require, he shall be subject to the like forfeitures, and be discharged from the public service.

SEC. 74. *And be it further enacted*, That all duties and fees to be collected shall be payable in money of the United States, or in foreign gold and silver coins, at the following rates; that is to say: The gold coins of Great Britain and Portugal of the standard prior to the year one thousand seven hundred and ninety-two, at the rate of one hundred cents for every twenty-seven grains of the actual weight thereof; the gold coins of France, Spain and the dominions of Spain, of the standard prior to the year one thousand seven hundred and ninety-two, at the rate of one hundred cents for every twenty-seven grains and two fifths of a grain of the actual weight thereof; Spanish milled dollars at the rate of one hundred cents for each dollar, the actual weight whereof shall not be less than seventeen pennyweights and seven grains, and in proportion for the parts of a dollar; crowns of France at the rate of one hundred and ten cents for each crown, the actual weight whereof shall not be less than eighteen pennyweights and seventeen grains, and in proportion for the parts of a crown. *Provided*, that no foreign coins shall be receivable which are not by law a tender for the payment of all debts, except in consequence of a proclamation of the President of the United States, authorizing such foreign coins to be received in payment of the duties and fees aforesaid.

SEC. 75. *And be it further enacted*, That a drawback of duties, as prescribed by law shall be allowed and paid on all goods, wares or merchandise imported into the United States, in respect to all such goods,

wares and merchandise, whereupon the duties shall have been paid, or secured to be paid, as, within twelve calendar months after payment made, or security given, shall be exported to any foreign port or place, other than the dominions of any foreign state immediately adjoining to the United States, either from the district of original importation, or from certain other districts; and all duties, drawbacks and allowances which shall be payable, or allowable, on any specific quantity of goods, wares, or merchandise, shall be deemed to apply in proportion to any greater or lesser quantity: *Provided*, that no goods, wares and merchandise imported, shall be entitled to a drawback of the duties paid, or to be secured thereon, unless the duties so paid, or secured thereon shall amount to fifty dollars at least; nor unless they shall be exported in the original casks, cases, chests, boxes, trunks or other packages, in which they were imported, without diminution or change of the articles which were therein contained, at the time of importation, in quantity, quality or value, necessary or unavoidable wastage or damage only excepted: *Provided always*, that it shall be lawful for the exporter, or exporters of any liquors in casks, coffee in casks or other packages, cocoa in casks or other packages, or any unrefined sugars, to fill up the casks or packages out of other casks or packages included in the same original importation, or into new casks, or packages corresponding therewith, to be marked and numbered as the original casks or packages; in case the original casks or packages shall, in the opinion of the officer appointed to examine the same, be so injured as to be rendered unfit for exportation, and in no other case: *Provided further*, that the filling up or change of package be done under the inspection of a proper officer, appointed for that purpose by the collector and naval officer, where any, of the port or place, from which such liquors, coffee, or unrefined sugars are intended to be exported; and the drawback on articles so filled up, or of which the packages have been changed, shall not be allowed without such inspection.

Drawback of duties to be allowed on exportation.

And where articles are imported in bulk, they shall be exported in the packages, if any, in which they were landed; for which purpose the officer delivering the same, shall return the packages they may be put into, if any, with their marks and numbers, and they shall not be entitled to drawback, unless exported in such packages, which shall be deemed the packages of original importation, nor unless they fully agree with the return made by the said officer; and in respect to distilled spirits, wines, or teas, the certificates issued by the inspector of the revenue for such spirits, wines, or teas, shall be given up, and the drawback shall not be allowed on any such spirits, wines or teas, as do not agree on examination with the certificates so given up.

SEC. 76. *And be it further enacted*, That in order to entitle the exporter or exporters of any goods, wares or merchandise to the benefit of the said drawback, or allowances, he or she shall, previous to putting or lading the same on board of any ship or vessel for exportation, give twenty-four hours notice at least to the collector of the district from which the same are about to be exported, of his, her, or their intention to export the same (unless in the case of distilled spirits, when six hours notice shall be deemed sufficient) and shall make entry in writing of the particulars thereof, and of the casks, cases, chests, boxes and other packages or parcels containing the same, or of which the same shall consist, and of their respective marks, numbers, and contents, and if imported articles, the name of the ship or vessel and master's name in which the person or persons, for or by whom and the place or places from which they were imported, also the district into which the said goods, wares or merchandise were imported, if other than the district from which they are intended to be exported. And the form of the said entry shall be as follows:

Duty of the person exporting for benefit of drawback.

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Form of the
entry for draw-
back.

Entry of merchandise intended to be exported by (here insert the name or names) on board of the (insert the denomination and name of the vessel) whereof (insert the name of the master) is master, for (insert the port or place to which destined) for the benefit of drawback, which were imported into the district of (insert the district of original importation) on the (insert the date of importation) by (insert the name of the importer) in the (insert the denomination and name of the vessel) from (insert the foreign port or place whence they were imported) and brought into the district on the (insert the date of the vessels entry) in the (insert the denomination and name of the vessel and master) from (insert the port from whence they arrived.)

Marks.	Numbers.	Packages and contents.	Net cost of and value of articles as having paid duties.	Weight or gauge.	Tare and draft, or allowance for leakage.

Oath to be made.

And in respect to the said imported articles, proof shall be made to the satisfaction of the collector and naval officer, where there is any naval officer, by the oath of the person or persons (including the exporter or exporters) through whose hands the said articles shall have passed, according to the best of their knowledge and belief, respecting the due importation of the said articles according to law, and in conformity to such notice of their identity, and of the payment, or securing the payment of the duties thereupon: *Provided*, that if through actual sickness or absence of the importer or other person, through whose hands the said goods, wares or merchandise intended to be so exported may have passed, and not otherwise, the proof required of them, or either of them, shall and may be accepted of from their known agent, factor, or the person who usually transacts their business: And the said collector shall direct the surveyor, where any, to inspect or cause to be inspected the goods, wares or merchandise so notified for exportation, and if they shall be found to correspond fully with the notice and proof concerning the same, the said collector, together with the naval officer, if any there be, shall grant a permit for lading the same on board of the ship or vessel named in such notice and entry, as aforesaid; which lading shall be performed under the superintendence of the officer by whom the same shall have been so inspected; and the said exporter or exporters shall likewise make oath that the said goods, so noticed for exportation, and laden on board such ship or vessel, previous to the clearance thereof, or within ten days after such clearance, are truly intended to be exported to the place whereof notice shall have been given, and are not intended to be reloaded within the United States, otherwise the said goods, wares and merchandise shall not be entitled to the benefit of drawback.

Goods notified for exportation, to be inspected, &c.

Manner of lading.

Further oath.

And the form of the direction to the surveyor of the port, where any, or to the officer who may inspect the said goods: and the permit for lading the said goods for exportation, shall be as follows:

District of

Port of

Form of the direction to inspect the goods, and permit to be laden.

The surveyor will cause the articles specified in [insert the name of the person making entry] entry to be examined, and if found to agree exactly therewith, will have them [weighed, gauged, or measured, as the case may require] and then permit the same to be laden on board the [insert the denomination and name of the vessel, and the master's name] master, for [insert the port of destination] for benefit of drawback.

A. B. Collector.

C. D. Naval Officer.

To the surveyor of the port of

And in cases where the persons making entry, as aforesaid, are the persons by whom the goods, wares or merchandise, intended to be exported, were originally imported into the United States, the said entry shall, after the lading of the said goods, be verified in manner following, to wit:

Form of verifying the entry.

I (insert the name) do solemnly, sincerely and truly swear (or affirm) that the articles specified in the above, or annexed entry, were imported by me (or consigned to me, as the case may be) in the (insert the denomination and name of the vessel) whereof (insert the name) was master, from (insert the name of the port or place where from) that they were duly entered by me, at the custom-house of this port, and the duties paid (or secured to be paid thereon, as the case may be) that they are the same in quantity, quality, package (and value, if articles paying an ad valorem duty) as at the time of importation, necessary or unavoidable wastage or damage only excepted, and are now actually laden on board the (insert denomination and name of the vessel) whereof (insert the name) is master; and that they are truly intended to be exported by me in the said vessel, to the port of (insert the name of the port or place) and are not intended to be relanded within the limits of the United States. So help me God.

Oath of importer when exporting.

And the oath or affirmation to be taken by the importer, when goods are sold, to be exported by another person, shall be as follows:

I (insert the name) do solemnly, sincerely and truly swear (or affirm) that the articles specified in the above or annexed entry, as imported by (or consigned to me, as the case may be) were truly imported by or consigned to me, in the (insert denomination or name of the vessel) whereof (insert the name) is master, from (insert the port or place) that they were duly entered by me at the custom-house of and the duties thereon paid (or secured to be paid, as the case may be) that they were the same in quantity, quality, package, necessary or unavoidable wastage or damage only excepted (and value, if articles paying an ad valorem duty) at the time of sale or delivery to (insert the name of the person or persons to whom sold or destined) as at the time of importation. So help me God.

Oath of importer when goods are to be exported by another person.

And the oath or affirmation to be taken, where goods are exported by a person, other than the importer, shall be as follows:

I (insert the name) do solemnly, sincerely and truly swear (or affirm) that the articles specified in the above or annexed entry, were purchased by me, of (insert the name of the person or persons from whom purchased) that they are now actually laden on board of the (insert the denomination and name of the vessel) whereof (insert the name) is master, and were at the time of such lading, and are now the same in quantity, quality, package, necessary or unavoidable wastage or damage only excepted (and value, of articles paying an ad valorem duty) as at the time of purchase, that they are truly intended to be exported by me, in the said vessel, to the port of (insert the name of the port or place) and are not intended to be relanded within the limits of the United States. So help me God.

And the oath or affirmation to be taken by any other person than the importer or exporter of merchandise, who may have bought and sold the same, or in whose possession the same may have been, shall be as follows:

I (insert the name) do solemnly, sincerely and truly swear (or affirm) that the articles of merchandise, specified in this entry, were purchased by me from (insert the name of the person from whom purchased) and were sold by me to (insert the name of the person to whom sold) and that they were not, to the best of my knowledge or belief, altered, or in any respect changed, in quantity, quality, value or package, necessary or unavoidable wastage or damage only excepted, while in my possession, or from the time of said purchase until the time of said sale. So help me God.

Districts from which goods may be exported subject to drawback.

Certificate to be obtained, where they are exported from a district different from that of importation.

SEC. 77. *And be it further enacted*, That the districts from which goods, wares or merchandise may be exported, subject to drawback, be only the districts of original importation, and those ports at which vessels from the Cape of Good Hope, or from any place beyond the same, are permitted to make entry; *Provided nevertheless*, that such goods, wares or merchandise, as are imported into a district other than the one from whence they are to be exported, shall not be entitled to drawback, unless they shall be accompanied with a certificate from the collector of the district, and naval officer of the same, if any there be, into which they were originally imported, specifying the marks, numbers and descriptions of the casks or other packages, with the names of the master and vessel, in which, the time when, and the place from whence they were imported, and where the articles are subject to duty, by weight, measure or gauge, the quantity thereof; and where they are articles subject to duty ad valorem, the net amount of each package, on which duty has been paid or secured to be paid; and in all cases the amount of the duties paid, or secured to be paid thereon, and by whom, and the names of the vessel and master, in which they are shipped from such district, and by whom; and in order to entitle any person to such certificate, he, she or they, shall make out an entry of all such goods, wares and merchandise, specifying the marks, numbers and descriptions of the casks or packages and their contents, the names of the master and vessel in which, the time when, by whom, and the place from which they were imported, the names of the master and vessel in which they are intended to be laden, and district in the United States to which they are destined; and shall moreover prove the truth of such entry, in like manner as is before required, for goods, wares and merchandise, exported from a district of original importation: which requisites being complied with, and the collector and naval officer, if any there be, satisfied therewith, they shall grant such certificate; and such goods, wares or merchandise shall be entered with the collector of the district into which they shall be brought, from the port or place of their original importation, by the person or persons so importing them, or to whom they may be consigned, specifying the names of the master and vessel in which, and the district from whence they are imported, together with the particulars of the packages, their marks, numbers, and their contents, and shall obtain a permit for the same, previous to the landing or unlading thereof; and any goods, wares or merchandise, landed without such entry being made and permit obtained, shall not be entitled to be exported, subject to drawback.

And the form of an entry of goods to be transported coastwise, for the purpose of being exported from another district, for the benefit of drawback, shall be as follows:—

Form of entry for transportation coastwise of goods entitled to drawback.

Entry of merchandise intended to be shipped by (insert the name or names) on board the (insert the denomination and name of vessel) whereof (insert the name) is master, for (insert the port and district where bound) to be exported from thence for the benefit of drawback, which were imported into this district on the (insert the date of the vessel's entry in which they were imported) by (insert the name of the importer) in the (insert the denomination and name of the vessel, and master's name) from (insert the name of the foreign port or place.)

Marks.	Numbers.	Packages and contents.	Cost of articles paying duty ad valorem.	Weight or gauge.	Tare and draft or allowance for leakage.

And the form of a certificate for the transportation coastwise, of goods intended to be exported to another district, to be granted in pursuance of the entry aforesaid, shall be as follows:

District of

Port of

We certify, that the merchandise herein after specified, which are now shipped by on board the of master, bound for the port of were duly imported into this district, on the day of by in the of master, from and the duties thereon paid, or secured to be paid, according to law.

Form of certificate for transportation coastwise of goods entitled to drawback.

Tare allowed.	Marks.	Numbers.	Packages, contents, value and rates of duty collected or secured.	Amount of duties.
			Here insert each package in detail, the contents, quality and value, if articles subject to duties ad valorem, with the rates of duty collected or secured, as the case may require.	

The amount of duties, paid or secured, being dollars.

A. B. Collector.

C. D. Naval Officer.

And the form of an entry for goods arriving coastwise, accompanied with a certificate as aforesaid, for the purpose of obtaining a drawback, shall be as follows:

Entry of merchandise, transported coastwise, for (insert the name or names of the consignee) in the (insert denomination and name of the vessel) whereof (insert the name) is master, from (insert the name of the port or district) for the purpose of being exported from the district of (insert the district in which they are to be unladen) for the benefit of drawback; which were imported in the district of (insert the district of original importation) on the (insert the date of importation) by (insert the importer's name) in the (insert the denomination and name of the vessel, and master's name) from (insert the foreign port or place from whence imported.)

Form of entry at the port of arrival of goods transported coastwise.

Marks.	Numbers.	Packages.	Contents.

And on making the said entry, an oath or affirmation shall be taken, which shall be of the form following, to wit:

I (insert the name) do solemnly, sincerely and truly swear (or affirm) according to the best of my knowledge and belief, that the entry by me subscribed is just and true; that the merchandise therein mentioned have been duly imported and the duties thereupon paid, or secured to be paid, according to law.

Form of oath on making such entry.

And the form of a permit for unlading goods transported coastwise, with a certificate as aforesaid, for the purpose of obtaining a drawback, shall be as follows:

Port of

Permit (insert the name of the person making entry) to land, from on board the (insert denomination and name of vessel, and name of master) master from (insert the port and district from which arrived, and the number of packages and contents, with their marks and numbers, agree-

Permit for unlading goods transported coastwise, for the benefit of drawback.

3 M



able to entry) having been brought coastwise from thence, for the purpose of being exported from this district, for the benefit of drawback.

A. B. Collector.

C. D. Naval Officer.

To the surveyor of the port of

At the port of arrival the same formalities are to be observed as if they were exported from the port of original importation.

Sec. 78. *And be it further enacted*, That when any goods, wares or merchandise, subject to drawback, shall be entered for exportation from any other district than the one into which they were originally imported, the person intending to export the same, besides producing the certificate herein before directed, shall give the same notice, and make entry in like manner, and the goods, wares and merchandise, therein expressed, shall undergo the same examination, and shall be laden on board under regulations, in all respects conformable to what is required by law, relative to goods, wares and merchandise entitled to drawback, and intended to be exported from the place of original importation.

Provision for transporting of goods subject to drawback by land conveyance, &c.

Sec. 79. *And be it further enacted*, That all goods, wares and merchandise, duly imported into either of the districts of Philadelphia, New York, and Baltimore, or into the ports of Boston and Providence, which shall be transported in part by water, and in part by land conveyance, from the port of Philadelphia, by the way of Burlington, Bordentown, Lambertown, or New Brunswick and South Amboy, to New York; or from the port of New York, by the way of South Amboy, New Brunswick, or Lambertown, Bordentown, or Burlington, to Philadelphia; or from the port of Philadelphia, by way of Wilmington, Newport, Christiana Bridge, New Castle, Port Penn, or Appoquinimink and Elkton, Frenchtown or Bohemia, to Baltimore; or from the port of Baltimore by the way of Elkton, Bohemia, or Frenchtown, and Port Penn, Appoquinimink, New Castle, Christiana Bridge, Newport, or Wilmington, to Philadelphia, and which being imported into Philadelphia, shall be exported from Baltimore, or New York, or being imported into Baltimore, or New York, shall be exported from Philadelphia, or shall be transported by land conveyance, from Boston to Providence, by the post road, or from Providence to Boston by the same road, and which being imported into Providence, shall be exported from Providence, or being imported into Providence, shall be exported from Boston; shall be entitled to the benefit of a drawback of the duties, upon exportation to any foreign port or place under the same provisions, regulations, restrictions and limitations; as if the said goods, wares and merchandise were transported coastwise from one to another of the said districts, and also upon the conditions following, to wit:—That due entry shall be made with the collector of the district, from which it shall be intended to transport any goods, wares or merchandise, as aforesaid, in like manner as is required in respect to the transportation thereof coastwise, in pursuance of this act; and the said collector shall cause the goods, wares and merchandise, so entered, to be inspected and marked in durable characters, by an officer of the customs, with the name of the said officer, and the date on which such inspection shall be made; and shall grant a permit for the transportation thereof, as aforesaid, therein designating the route, and expressing the marks, numbers and contents of each chest, bale, box or other package, and all other particulars required by this act, to be inserted in a certificate for the transportation coastwise, of goods, entitled to drawback, and shall and may, whenever he may deem the same necessary for the security of the revenue, cause each chest, bale, box or other package, so permitted to be transported, to be secured with proper fastenings or under the seal of his office—and upon the arrival of any goods, wares or merchandise, transported under a permit as aforesaid, and within twenty-four hours thereafter, report and entry shall be made to the collector of the district as in the case of goods transported coastwise, pursuant to this act, at

which time the permit aforesaid shall be surrendered, and the goods, wares or merchandise shall be inspected and compared therewith; and on being found to agree, shall be entitled to drawback, on the exportation thereof to a foreign port or place, and not otherwise. And if any goods, wares or merchandise, so permitted to be transported as aforesaid, shall be transported by any other route, than that expressed in the permit, to be granted as aforesaid, or shall not be accompanied with the said permit, or if due entry shall not be made, at the port of arrival, as above required, and if the permit granted as aforesaid shall not be surrendered, or if the said goods, wares and merchandise shall be unpacked, or the contents, or any part thereof, changed before entry and inspection at the port of arrival, as above required, or if any mark, fastening or seal, placed thereon by direction of any officer of the customs, shall be defaced or broken, in each and every such case, the goods, wares or merchandise in respect to which such omission or wrong doing shall happen, or the value thereof, shall be forfeited and recovered of the person or persons, making default in either of the cases aforesaid.

Sec. 80. *And be it further enacted*, That for all goods, wares, or merchandise, entitled to drawback, which shall be exported from the district into which they were originally imported, the exporter or exporters shall be entitled to receive from the collector of such district, a debenture or debentures, for the amount of the drawback, to which such goods, wares, or merchandise are entitled, payable at the same time or times, respectively, on which the duties on the said goods, wares or merchandise shall become due. And it shall be the duty of the said collector, to discharge such debentures, out of the product of the duties arising on the importation of the goods exported as aforesaid.

Provided, That in respect to any goods, wares or merchandise, on which the whole or any instalment of the duties shall have been paid prior to an entry for exportation, the debenture for the amount of the drawback of such duties as shall have been paid, shall be made payable in fifteen days, to be computed from the time of signing the bond, to be given as herein after directed. *And provided*, that all debentures shall be issued and made payable to the original importer or importers of the goods, wares and merchandise, entered for exportation, whenever the same shall be requested, in writing, by the exporter or exporters, and not otherwise.

And where any goods, wares or merchandise, are exported from any other district than the one into which they were originally imported, it shall be the duty of the collector of such district, together with the naval officer thereof, where there is one, to grant to the exporter or exporters, a certificate, expressing that such goods, wares and merchandise were exported from such district, with the marks, numbers, and descriptions of the packages and their contents, the names of the master and vessel in which, and the port to which they were exported, and by whom, and the names of the vessel and master in which they were brought, and by whom shipped at the district from whence they came, and the amount of the drawback to which they are entitled; and such certificate shall entitle the possessor thereof, to receive from the collector of the district with whom the duties on the said goods were paid, or secured to be paid, a debenture or debentures, for the amount of the drawback expressed in the said certificate, or certificates, payable at the same time, and in like manner as is herein directed for debentures on goods, wares or merchandise, exported from the port or place of original importation: *Provided nevertheless*, that the collector aforesaid may refuse to grant such debenture or debentures, in case it shall appear to him that any error has arisen, or any fraud has been committed; and in case of such refusal, if the debenture or debentures claimed shall exceed one hundred dollars, it shall be the duty of the said collector to represent the case to

Debenture to be issued for the amount of drawback.

Certificate to be given of the exportation of goods from a district other than that of original importation; and debenture to be issued in the district where the duties were paid or secured.

In case of error or fraud, debenture may be refused.

Drawback not
to be paid be-
fore the duties.

the comptroller of the treasury, who shall determine whether such de-
benture or debentures shall be granted or not. *And provided always,*
that in no case of an exportation of goods shall a drawback be paid,
until the duties on the importation thereof shall have been first received.

And the form of a certificate to be granted on the exportation to a
foreign port, of goods, wares or merchandise, from a district, other than
the district into which such goods were originally imported, shall be as
follows:

Form of the
certificate.

District of
Port of

We hereby certify, that the merchandise herein after specified, which
were imported into the district of on the of
by in the of master, from and
landed in this district, in the month of out of the
of master, from (having been previously entered
at this office by ,) have been exported hence by
in the belonging to master, bound for
having been previously inspected and (weighed, gauged, or measured,
as the case may require) and that the said with both
of have entered into bond in pursuance of the laws in that case
made and provided.

Marks.	Numbers.	Packages, contents, and rates of duties.	Amount of duties.
		Here insert, in detail, the packages exported, their quality, and con- tents, the value, if ar- ticles subject to duties ad valorem, the tare, if articles on which tare is allowed, and the rates of duties.	

Nett amount of drawbacks payable, dollars and
cents.

A. B. Collector.
C. D. Naval Officer.

And the form of the debentures, to be issued as aforesaid, shall be as
follows:

Form of de-
benture.

No. District of
Debenture for Port of

In pursuance of law, I hereby certify, that the sum of (here insert the
amount) will be due from the United States of America, payable at this
office, to (here insert the name of the exporter, or his known agent or
attorney) or order, on the (here insert the time when payable) for draw-
back of duties on merchandise imported by (here insert the name of the
importer and the denomination and name of the vessel in which they
were imported) and exported by the said (here insert the name of the
exporter.) Provided the duties arising on the importation of the said
merchandise shall have been discharged prior to the said time.

A. B. Collector.

Countersigned,
C. D. Naval Officer.

Debentures as-
signable.

And for the purpose of maintaining the credit of the said debentures,
it is hereby declared, that the debentures to be issued as aforesaid, shall
be assignable by delivery and endorsement of the parties, who may
receive the same; and in all cases where payment shall be refused by
the collectors of the districts where the said debentures were granted,
in consequence of the non-payment of the duties which accrued on the



importation of the goods for which such debentures were issued, for a longer time than three days after the same shall have been due and payable, said refusal to be proved in the same manner as in the case of non-payment of bills of exchange, it shall be lawful for the possessor or assignee of any debenture, upon which payment has been refused as aforesaid, to institute and maintain, in the proper circuit or district court of the United States, a suit against the person to whom such debenture was originally granted, or against any endorser thereof, whereby to recover the amount of such debenture, with interest at the rate of six per centum per annum, from the time when the same became due and payable. And in all suits for the recovery of money upon debentures issued by the collectors of the customs as aforesaid, it shall be the duty of the court in which such suits shall be pending, to grant judgment at the return term, unless the defendant or defendants shall, in open court, exhibit some plea, on oath or affirmation, by which the court shall be satisfied that a continuance, until the next succeeding term, is necessary to the attainment of justice; in which case, and not otherwise, a continuance until the next term may be granted.

In case of the collector's refusing to pay debentures, suit may be maintained by the holder against the grantee and indorsers thereof.

Judgment at the return term.

SEC. 81. And be it further enacted, That before the receipt of any debenture, in case of exportation from the district of original importation, and in case of exportation from any other district before the receipt of any such certificate, as is herein before required to be granted, the person, applying for such debenture or certificate, shall, previous to such receipt, and before the clearance of the vessel in which the merchandise were laden for exportation, or within ten days after such clearance, give bond, with one or more sureties, to the satisfaction of the collector, who is to grant such debenture or certificate, as the case may be, in a sum equal to double the amount of the sum for which such debenture or certificate is granted, conditioned, that the said goods, or any part thereof, shall not be relanded in any port or place within the limits of the United States, and that the said exporter or exporters, shall produce, within the time herein limited, the proofs and certificates required of the said goods, wares and merchandise, having been delivered without the limits aforesaid.

Bond to be given to deliver the goods at a foreign port.

And the form of the bond aforesaid, shall be as follows:

Know all men by these presents, that we _____ of the _____ of _____ are held and firmly bound to the United States of America, in the sum of _____ for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Witness our hands and seals, this _____ day of _____ one thousand _____

Form of the said bond.

Whereas the following merchandise has been duly imported into the United States, to wit: (here particularize the person or persons by whom the several articles were imported, the denomination and name of the vessel, master's name, from whence, into what district, and when imported, together with the marks, numbers, description of, and number of packages, with their contents) which said merchandise hath been re-shipped by the above bounden _____ in order to export the same in the _____ of _____ master, now in the port of _____ and bound for _____

The condition of this obligation therefore is such, that if the aforesaid recited merchandise, or any part thereof, be not relanded in any port or place within the limits of the United States, and if the certificates and other proofs required by law of the delivery of the same at the aforesaid port of _____ or at any other port or place without the limits of the United States, as aforesaid, shall be produced at this office, within _____ from the date hereof, then this obligation shall be null and void, but otherwise to remain in full force and virtue

Sealed and delivered }
in the presence of }

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3 m 2

Such bond to be discharged on producing a certificate from the consignee—

That all bonds which may be given for any goods, wares or merchandise, exported from the United States, and on which any drawback of duties or allowance shall be payable, in virtue of such exportation, shall and may be discharged, and not otherwise, by producing within one year from the date thereof, if the exportation be made to any port of Europe or America, or within two years, if made to any part of Asia or Africa, a certificate under the hand of the consignee at the foreign port or place to whom the said goods, wares and merchandise shall have been addressed, therein particularly setting forth and describing the articles so exported, their marks, numbers, description of packages, the number thereof, and their actual contents, and declaring that the same have been received by them, from on board the vessel, specifying the names of the master and vessel, from which they were so received, and where such goods, wares or merchandise, are not consigned or addressed to any particular person at the foreign port or place to which the ship or vessel is destined, or may arrive, but where the master, or other person on board such ship or vessel may be the consignee of such goods, wares or merchandise, a certificate from the person or persons to whom such goods, wares and merchandise may be sold or delivered, by such master, or other person, shall be produced to the same effect, as that required if the person or persons receiving the same were originally intended to be the consignee or consignees thereof. And in addition to the certificate aforesaid, it shall be necessary to produce a certificate under the hand and seal of the consul or agent of the United States, residing at the said place, declaring either that the facts stated in the certificate of such consignee, or other person aforesaid, are to his knowledge true, or that such certificate is deserving of full faith and credit; which certificates of the consignee, or other person, and consul, or agent, shall, in all cases, as respects the landing or delivery of the said goods, wares or merchandise, be confirmed by the oath or affirmation of the master and mate, if living, or in case of their death, by the oath or affirmation of the two principal surviving officers of the ship or vessel in which the exportation shall be made; and in all cases where there shall be no consul or agent of the United States residing at the said place of delivery, the certificate of the consignee, or other person herein before required, shall be confirmed by the certificate of two reputable American merchants residing at the said place, or if there are no such American merchants, then by the certificate of two reputable foreign merchants, testifying that the several facts stated in such consignee, or other person's certificate, are, to their knowledge, just and true, or that such certificate is, in their opinion, worthy of full faith and credit; which certificate shall also be supported by the oath or affirmation of the master and mate, or other principal officers of the vessel in manner as before prescribed, which oath or affirmation of the said master and mate, or other principal officers, shall, in all cases, when taken at a foreign port or place, be taken and subscribed before the consul or agent of the United States, residing at such foreign port or place, if any such consul or agent reside thereat.

Where there is no Consul a different certificate shall be produced.

Course of proceeding where the foregoing forms cannot be complied with.

And in cases of loss by sea, or by capture or other unavoidable accident; or when, from the nature of the trade, the proofs and certificates before required are not, and cannot be procured, the exporter or exporters shall be allowed to adduce to the collector of the port of exportation such other proofs as they may have, and as the nature of the case will admit: which proofs shall, with a statement of all the circumstances attending the transaction, within the knowledge of such collector, be transmitted to the comptroller of the treasury, who shall have power to allow a further reasonable time for obtaining the proofs aforesaid; or if he be satisfied with the truth and validity of the proofs adduced, to direct the bond or bonds of such exporter or exporters, to be cancelled: *Pro-*

vided, that if the amount of such bond shall not exceed the penal sum of two hundred dollars, the collector, with the naval officer, where there is one, and alone, where there is none, may, pursuant to such rules as shall be prescribed by the comptroller of the treasury, admit such proof as may be adduced; and if they deem the same satisfactory, cancel such bond accordingly.

And the form of the certificate of a consignee, declaring the delivery of merchandise at a foreign port, shall be as follows:

I (A. A. or we B. B. and C. C.) of the (city or town) of (merchant, or merchants, and copartners in trade) do hereby certify, that the goods or merchandise herein after described, have been landed in this (city, town or port) between the and days of from on board the of whereof G. G. is at present master, viz. (here insert the particular articles delivered in manner following, as the case may require; namely,

Form of consignee's certificate.

A. B. No. 1. a 10. ten hogsheads } Containing fourteen thousand
C. D. No. 3. 6. 9. 15. four tierces } pounds weight of coffee.
E. F. No. 14. 18. 22. 25. } Eight hogsheads, containing ten thousand
27. 30. 33. 36. } pounds weight of brown sugar.

G. H. No. 21. a 30. Ten chests, containing seven hundred weight of hyson tea.

I. K. 7. 16. 19. Three bales, containing one hundred and fifty pieces of nankeen—) which, according to the bills of lading for the same, were shipped on board the at the port of in the United States of America, on or about the day of and consigned to (me or to us) by of aforesaid, merchant (or by the master of the said)

Given under (my or our) hands, at the (city of) this day of

And the form of the oath or affirmation of the principal officers of a vessel, confirming the landing of merchandise at a foreign port, shall be as follows:

Port of We G. E. master, and H. H. mate of the of lately arrived from the port of in the United States of America, do solemnly (swear or affirm) that the goods or merchandise enumerated and described in the preceding certificate, dated the day of and signed by A. A. of the city of merchant, were actually delivered at the said port, from on board the said within the time specified in the said certificate.

Form of the confirmatory oath to be taken by the officers of the vessel.

Sworn or affirmed at the city of before me, this day of

And the form of a verification of the delivery of merchandise at a foreign port, to be executed by a consul or agent of the United States, shall be as follows:

I, M. M. (consul or agent) of the United States of America, at the city of do declare, that the facts set forth in the preceding certificate, subscribed by A. A. of the said city, merchant, and dated the day of are, to (my knowledge, just and true, or are in my opinion just and true, and deserving full faith and credit.)

Form of the consular verification thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of my office, at this day of

M. M. Consul.

And the form of a verification of the delivery of merchandise, to be executed by American or foreign merchants, as the case may require, shall be as follows:

We residing in the city of do declare, that the facts stated in the preceding certificate, signed by of the said (city) merchant, on the day of are (to our knowledge, just and true, or are in our opinion, just and

Form of the verification by merchants.



true, and worthy of full faith and credit.) We also declare that there is (no consul or other public agent for the United States of America, or American merchants, as the case may require) now residing at this place.

Dated at the city of
this day of

R. S.
T. L.

Consular fees
therefor.

And it shall be lawful for the consuls or agents of the United States, residing at the foreign ports, to demand twenty-five cents for administering each oath or affirmation aforesaid, and one dollar for granting each certificate as aforesaid; and if any consul or agent shall demand other or greater fees than are allowed as aforesaid, his bond shall be forfeited.

Penalty on re-
landing goods
entered for
drawback, &c.

SEC. 82. *And be it further enacted*, That if any goods, wares or merchandise, entered for exportation, with intent to drawback the duties, or to obtain any allowance given by law on the exportation thereof, shall be landed within any port or place within the limits of the United States as aforesaid, all such goods, wares or merchandise shall be subject to seizure and forfeiture, together with the ship or vessel from which such goods, wares or merchandise shall be landed, and the vessels or boats used in landing the same; and all persons concerned therein shall, on indictment and conviction thereof, suffer imprisonment for a term not exceeding six months; and for discovery of frauds and seizure of goods, wares or merchandise, reloaded contrary to law, the several officers established by this act, shall have the same powers, and in case of seizure the same proceedings shall be had, as in the case of goods, wares and merchandise imported contrary to law.

Powers of the
officers of the
customs, in re-
lation to draw-
backs.

Bounty on the
exportation of
pickled fish and
salted provis-
ions.

SEC. 83. *And be it further enacted*, That on all pickled fish of the fisheries of the United States, exported therefrom, there be allowed and paid a bounty of thirty cents per barrel; and on all provisions salted within the United States (dried fish excepted) there be allowed and paid a bounty of twenty-five cents per barrel, to be paid by the collector of the district from which the same shall be so exported, without any deduction or abatement: *Provided always*, that in order to entitle the exporter or exporters of such pickled fish or salted provisions to the benefit of such bounty or allowance, the said exporter or exporters shall make entry with the collector and naval officer of the district from whence the said pickled fish or salted provisions are intended to be exported, and shall specify in such entry the names of the master and vessel in which, and the place where such provisions or fish are intended to be exported, together with the particular quantity of each, whether pickled fish or salted provisions, and the species thereof; and proof shall be made to the satisfaction of the collector of the district from which such articles are intended to be exported, and of the naval officer thereof, where any, that the same, if fish, are of the fisheries of the United States; if salted provisions, that they were salted within the United States; and no entry shall be received as aforesaid, of any pickled fish or salted provisions, which have not been inspected and marked, pursuant to the inspection laws of the respective states, where inspection laws are in force, in regard to any pickled fish or salted provisions; and the casks containing such fish or provisions, shall be branded with the words "for bounty," with the name of the inspector or packer, the species and quality of the fish contained therein, and the name of the port of exportation; and the collector of such district shall, together with the naval officer, where there is one, grant an order or permit for an inspector to examine the pickled fish or salted provisions, or both, as expressed in such entry, and if they correspond therewith, and the said officer is fully satisfied that they are, if fish, of the fisheries of the United States, or if provisions, salted therein, to lodge the same agreeably to such entry on board the ship or

Exporter to
make entry.

Proof to be
made.

The fish and
provisions to be
inspected and
branded.

Inspector to
examine them.

Permit to lodge.

vessel therein expressed; which lading shall be performed under the superintendence of the officer examining the same, who shall make returns of the quantity and quality of pickled fish or salted provisions, so laden on board, in virtue of such order or permit, to the officer or officers granting the same. And the said exporter or exporters, when the lading is completed, and after returns thereof have been made as above directed, shall make oath or affirmation, that the pickled fish or salted provisions expressed in such entry, and then actually laden on board the ship or vessel as therein expressed, are truly and bona fide, if pickled fish, of the fisheries of the United States, if salted provisions, salted therein; that they are truly intended to be exported as therein specified, and are not intended to be relanded within the limits of the United States; and shall also give bond in double the amount of the duty, bounty or allowance to be received, with one or more sureties to the satisfaction of the collector of the port or place from which the said pickled fish, or salted provisions, are intended to be exported, conditioned that the same shall be landed and left at some foreign port or place without the limits aforesaid; which bonds shall be cancelled at the same periods, and in like manner as is provided in respect to the bonds given on the exportation of goods, wares or merchandise, entitled to drawback of duties: *Provided always*, that the said bounty or allowance shall not be paid until at least six months after the exportation of such pickled fish, or salted provisions, to be computed from the date of the bond, and until the exporter or exporters thereof shall produce to the collectors with whom such outward entry is made, such certificates, or other satisfactory proof, of the landing of the same as aforesaid, as is heretofore made necessary for cancelling the bonds given on the exportation of goods entitled to drawback as aforesaid: *And provided also*, that the bounty or allowance as aforesaid, shall not be paid unless the same shall amount to ten dollars at least upon each entry.

And the form of entry, required to be made as aforesaid, shall be as follows:

Entry of (salted provision or pickled fish, or both, as the case may be) intended to be exported for the benefit of bounty, by (insert the name of the exporter) in the (insert the name and denomination of the vessel) whereof (insert the name of the master) is master, bound for (insert the port of destination.)

Marks as branded on the casks.	Number of barrels.	Description or species of fish or provisions.	Quality.

And the oath or affirmation to be taken by the exporter or exporters of pickled fish, or salted provisions, shall be in manner following:

District of

I (insert the name) do solemnly, sincerely, and truly swear (or affirm) to the best of my knowledge and belief, that the (salted provisions or pickled fish, or both, as the case may be) designated in the annexed entry, dated and subscribed with my name, have not been imported from any foreign port or place, but are truly and bona fide (if provisions) salted provisions, cured within the limits of the United States, (or if fish) pickled fish of the fisheries of the United States; that they are now actually laden on board the (insert the denomination and

Exporter to make oath,

and give bond.

Mode of cancelling the bonds.

When the bounty shall be paid.

Form of entry of fish and provisions for bounty.

Form of the oath.

name of the vessel) whereof (insert the name) is master, and are to be exported to (insert the place of destination) and are not intended to be landed in the limits of the United States. So help me God.

And the form of the bond, to be executed as aforesaid, shall be as follows: to wit,

Form of the
bond.

Know all men by these presents, that we are held and firmly bound unto the United States of America, in the sum of to be paid to the said United States; for the payment whereof, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, dated the day of in the year of the independence of the United States, and in the year of our Lord

The condition of this obligation is such, that whereas the above bounden hath entered at the custom-house of the port of the following merchandise (here insert the number of packages with their contents, together with their marks and numbers) for the purpose of being exported for the benefit of bounty, in the (insert denomination and name of vessel) whereof (insert name) is master, for (insert name of the place) as per entry thereof made and subscribed by the aforesaid on the day of which merchandise has been laden under the superintendence of A. B. an inspector of the customs for the port of as per return thereof annexed to said entry; which merchandise is now actually on board the said now laying in the port of for the purpose of being exported as aforesaid.

Now therefore, if the said merchandise shall not be relanded within the limits of the United States, but shall be duly exported to the or any other port or place, without the limits aforesaid, then this obligation to be void and of no effect, otherwise it shall remain and be in full force and virtue.

Sealed and delivered
in the presence of

Forfeiture on
making a false
entry for export-
ation, for bene-
fit of drawback
or bounty.

SEC. 84. And be it further enacted, That if any goods, wares or merchandise, of which entry shall have been made in the office of a collector, for the benefit of drawback or bounty upon exportation, shall be entered by a false denomination, or erroneously as to the time when and the vessel in which they were imported, or shall be found to disagree with the packages, quantities or qualities, as they were at the time of original importation, except such disagreement as may have been occasioned by necessary or unavoidable wastage or damage only, and except also in cases where permission shall have been obtained according to law, to alter or change the quantities or packages thereof, all such goods, wares or merchandise, or the value thereof to be recovered of the owner or person making such entry, shall be forfeited. *Provided*, that the said forfeiture shall not be incurred, if it shall be made appear to the satisfaction of the collector and naval officer of the district, if there be a naval officer, and if there be no naval officer, to the satisfaction of the said collector, or of the court in which a prosecution for the forfeiture shall be had, that such false denomination, error, or disagreement happened by mistake or accident, and not from any intention to defraud the revenue.

SEC. 85. And be it further enacted, That in all cases where a ship or vessel shall be prevented by ice from getting to the port or place, at which her cargo is intended to be delivered, it shall be lawful for the collector of the district, in which such ship or vessel may be obstructed, to receive the report and entry of such ship or vessel, and with the consent of the naval officer (where there is one) to grant a permit or permits for unloading or landing the goods, wares, and merchandise imported in such ship or vessel, at any place within his district, which shall appear to him most convenient and proper: *Provided always*, that the report

Vessels de-
tained by ice
may unload at
other places
than ports of de-
livery.



and entry of such ship or vessel, and her cargo, or any part thereof, and all persons concerned therein, shall be under and subject to the same rules, regulations, restrictions, penalties and provisions, as if the said ship or vessel had arrived at the port of her destination, and had there proceeded to the delivery of her cargo.

SEC. 86. *And be it further enacted*, That no officer of the customs, or other person employed under the authority of the United States, in the collection of the duties imposed by law on goods, wares or merchandise imported into the United States, and on the tonnage of ships or vessels, shall own, either in whole or in part, any ship or vessel, or act as agent, attorney, or consignee for the owner or owners of any ship or vessel, or of any cargo or lading on board the same; nor shall any officers of the customs, or other person employed in the collection of the duties as aforesaid, import, or be concerned directly or indirectly in the importation of any goods, wares or merchandise, for sale, into the United States, on penalty that every person so offending, and being thereof convicted, shall forfeit and pay the sum of five hundred dollars.

Officers of the customs not to be concerned in shipping or commerce.

SEC. 87. *And be it further enacted*, That so much of the twelfth section of an act, entitled "An act making alterations in the treasury and war departments," as restricts all officers of the United States, employed in the collection of the duties imposed by law on goods, wares and merchandise imported into the United States, and on the tonnage of ships or vessels, from buying or disposing of the funds or debts of the United States, or of any state, be repealed.

They may buy or dispose of public funds.
Act of May 8, 1792, ch. 37.

SEC. 88. *And be it further enacted*, That if any officer of the customs shall directly or indirectly take or receive any bribe, reward or recompense, for conniving, or shall connive at any false entry of any ship or vessel, or of any goods, wares or merchandise, and shall be convicted thereof, every such officer or other person shall forfeit and pay a sum not less than two hundred, nor more than two thousand dollars for each offence; and any person giving or offering any bribe, recompense or reward for any such deception, collusion, or fraud, shall forfeit and pay a sum not less than two hundred dollars, nor more than two thousand dollars, for each offence; and in all cases where an oath or affirmation is by this act required from a master or other person having the command of a ship or vessel, or from an owner or consignee of any goods, wares and merchandise, his, her, or their factor, or agent, and generally whenever an oath or affirmation is required from any person or persons, whatsoever, by virtue of this act, if the person so swearing or affirming shall swear, or affirm falsely, such person shall, on indictment and conviction thereof, be liable to the same pains and penalties prescribed for persons convicted of wilful and corrupt perjury.

Penalty on their receiving a bribe to connive at a false entry, or conniving at such entry.

Penalty on giving or offering such a bribe.

False swearing to be punished as perjury.

SEC. 89. *And be it further enacted*, That all penalties, accruing by any breach of this act, shall be sued for, and recovered with costs of suit, in the name of the United States of America, in any court competent to try the same; and the trial of any fact, which may be put in issue, shall be within the judicial district in which any such penalty shall have accrued, and the collector, within whose district the seizure shall be made, or forfeiture incurred, is hereby enjoined to cause suits for the same to be commenced without delay, and prosecuted to effect; and is moreover authorized to receive from the court within which such trial is had, or from the proper officer thereof, the sum or sums so recovered, after deducting all proper charges to be allowed by the said court, and on receipt thereof the said collector shall pay and distribute the same without delay, according to law, and transmit quarter yearly to the treasury an account of all monies by him received for fines, penalties and forfeitures, during such quarter. And all ships or vessels, goods, wares or merchandise, which shall become forfeited in virtue of this act, shall be seized, libelled and prosecuted as aforesaid, in the pro-

Penalties how to be sued for.

Collectors authorized to receive penalties when recovered.

Manner of proceeding to the condemnation.



of vessels and
goods seized.

per court having cognizance thereof; which court shall cause fourteen days notice to be given of such seizure and libel, by causing the substance of such libel, with the order of the court thereon, setting forth the time and place appointed for trial, to be inserted in some newspaper published near the place of seizure, and also by posting up the same in the most public manner, for the space of fourteen days, at or near the place of trial; for which advertisement a sum not exceeding ten dollars shall be paid: And proclamation shall be made in such manner as the court shall direct; and if no person shall appear and claim any such ship or vessel, goods, wares or merchandise, and give bond to defend the prosecution thereof, and to respond the cost in case he shall not support his claim, the court shall proceed to hear and determine the cause according to law; and upon the prayer of any claimant to the court, that any ship or vessel, goods, wares or merchandise, so seized and prosecuted, or any part thereof, should be delivered to such claimant, it shall be lawful for the court to appoint three proper persons to appraise such ship or vessel, goods, wares or merchandise, who shall be sworn in open court for the faithful discharge of their duty; and such appraisal shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisal, if the claimant shall, with one or more sureties, to be approved of by the court, execute a bond in the usual form to the United States, for the payment of a sum equal to the sum at which the ship or vessel, goods, wares or merchandise, so prayed to be delivered, are appraised, and moreover produce a certificate from the collector of the district wherein such trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares and merchandise, or tonnage duty on the ship or vessel, so claimed, have been paid or secured in like manner, as if the goods, wares or merchandise, ship or vessel had been legally entered, the court shall, by rule, order such ship or vessel, goods, wares or merchandise, to be delivered to the said claimant, and the said bond shall be lodged with the proper officer of the court, and if judgment shall pass in favour of the claimant, the court shall cause the said bond to be cancelled; but if judgment shall pass against the claimant, as to the whole, or any part of such ship or vessel, goods, wares or merchandise, and the claimant shall not within twenty days thereafter pay into the court, or to the proper officer thereof, the amount of the appraised value of such ship or vessel, goods, wares or merchandise so condemned, with the costs, judgment shall and may be granted upon the bond on motion in open court, without further delay. And when any prosecution shall be commenced, on account of the seizure of any ship or vessel, goods, wares or merchandise, and judgment shall be given for the claimant or claimants; if it shall appear to the court before whom such prosecution shall be tried, that there was a reasonable cause of seizure, the said court shall cause a proper certificate or entry to be made thereof, and in such case the claimant or claimants shall not be entitled to costs, nor shall the person who made the seizure, or the prosecutor, be liable to action, suit or judgment on account of such seizure and prosecution: *Provided*, that the ship or vessel, goods, wares or merchandise, be after judgment forthwith returned to such claimant or claimants, his, her, or their agent or agents: *And provided*, that no action or prosecution shall be maintained in any case under this act, unless the same shall have been commenced within three years next after the penalty or forfeiture was incurred.

Limitation of
suits under this
act to three
years.

Condemned
ships and goods
to be sold at
public auction.

SEC. 90. *And be it further enacted*, That all ships or vessels, goods, wares or merchandise, which shall be condemned by virtue of this act, and for which bond shall not have been given by the claimant or claimants, agreeably to the provisions for that purpose in the foregoing section, shall be sold by the marshal or other proper officer of the court in which condemnation shall be had, to the highest bidder, at public auc-

tion, by order of such court, and at such place as the court may appoint, giving at least fifteen days notice (except in cases of perishable goods) in one or more of the public newspapers of the place where such sale shall be; or if no paper is published in such place, in one or more of the papers published in the nearest place thereto; for which advertising, a sum not exceeding five dollars shall be paid. And the amount of such sales, deducting all proper charges, shall be paid within ten days after such sale by the person selling the same, to the clerk or other proper officer of the court directing such sale, to be by him, after deducting the charges allowed by the court, paid to the collector of the district in which such seizure or forfeiture has taken place, as herein before directed.

SEC. 91. *And be it further enacted*, That all fines, penalties and forfeitures, recovered by virtue of this act (and not otherwise appropriated) shall, after deducting all proper costs and charges, be disposed of as follows: one moiety shall be for the use of the United States, and be paid into the treasury thereof, by the collector receiving the same; the other moiety shall be divided between, and paid in equal proportions to, the collector, and naval officer of the district, and surveyor of the port, wherein the same shall have been incurred, or to such of the said officers as there may be in the said district; and in districts where only one of the aforesaid officers shall have been established, the said moiety shall be given to such officer: *Provided nevertheless*, that in all cases where such penalties, fines and forfeitures shall be recovered in pursuance of information given to such collector, by any person other than the naval officer or surveyor of the district, the one half of such moiety shall be given to such informer, and the remainder thereof shall be disposed of between the collector, naval officer, and surveyor, or surveyors, in manner aforesaid: *Provided also*, that where any fines, forfeitures and penalties, incurred by virtue of this act, are recovered in consequence of any information given by any officer of a revenue cutter, they shall, after deducting all proper costs and charges, be disposed of as follows: one fourth part shall be for the use of the United States, and paid into the treasury thereof in manner as before directed; one fourth part for the officers of the customs, to be distributed as herein before set forth; and the remainder thereof to the officers of such cutter, to be divided among them agreeably to their pay: *And provided likewise*, that whenever a seizure, condemnation and sale of goods, wares or merchandise, shall take place within the United States, and the value thereof shall be less than two hundred and fifty dollars, that part of the forfeiture which accrues to the United States, or so much thereof as may be necessary, shall be applied to the payment of the cost of prosecution. *And be it further provided*, that if any officer, or other person entitled to a part or share of any of the fines, penalties, or forfeitures, incurred in virtue of this act, shall be necessary as a witness on the trial for such fine, penalty, or forfeiture, such officer or other person may be a witness upon the said trial; but in such case he shall not receive nor be entitled to any part or share of the said fine, penalty or forfeiture, and the part or share to which he otherwise would have been entitled, shall revert to the United States.

Distribution of
fines, penalties
and forfeitures.

Persons entitled to a share of the fines, &c. may be witnesses, &c.

SEC. 92. *And be it further enacted*, That except into the districts herein before described on the northern, north-western and western boundaries of the United States, adjoining to the dominions of Great Britain, in Upper and Lower Canada, and the districts on the rivers Ohio and Mississippi, no goods, wares or merchandise of foreign growth or manufacture, subject to the payment of duties, shall be brought into the United States from any foreign port or place in any other manner than by sea, nor in any ship or vessel of less than thirty tons burthen, agreeably to the admeasurement hereby directed for ascertaining the

Except in certain districts no goods to be brought into the United States, but by sea and in vessels of at least thirty tons burthen, &c.

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Drawback to be allowed only on exportations by sea and in vessels of thirty tons and upwards.

Masters of vessels bound to foreign ports to exhibit manifests, and obtain clearances.

Penalty in default thereof.

Form of the manifest.

tonnage of ships or vessels; nor shall be landed or unladen at any other port than is directed by this act, under the penalty of seizure and forfeiture of all such ships or vessels, and of the goods, wares or merchandise imported therein, landed or unladen in any other manner. And no drawback of any duties on goods, wares or merchandise of foreign growth or manufacture, shall be allowed on the exportation thereof from any district of the United States, otherwise than by the sea, and in vessels not less than thirty tons burthen.

Sec. 93. *And be it further enacted*, That the master, or person having the charge or command of any ship or vessel, bound to a foreign port or place, shall deliver to the collector of the district from which such ship or vessel shall be about to depart, a manifest of all the cargo on board the same, and the value thereof, by him subscribed, and shall swear, or affirm to the truth thereof; whereupon the said collector shall grant a clearance for such ship or vessel and her cargo, but without specifying the particulars thereof in such clearance, unless required by the said master, or other person having the charge or command of such ship, or vessel, so to do. And if any ship or vessel, bound to a foreign port or place, shall depart on her voyage to such foreign port or place, without delivering such manifest, and obtaining a clearance as hereby required, the said master, or other person having the charge or command of such ship or vessel, shall forfeit and pay the sum of five hundred dollars, for every such offence:

And the form of the report and manifest, to be delivered as aforesaid, shall be as follows:

Report and manifest of the cargo, laden at the port of master, bound for

on board the

Marka.	Numbers.	Packages or articles in bulk.	Contents or quantities.	Value at the port of exportation.

And the oath or affirmation, to be taken by the master or commander of the ship or vessel as aforesaid, shall be as follows:

District of

Oath to be taken on clearing.

I (insert the name) master or commander of the (insert the denomination and name of the vessel) bound from the port of (insert the name of the port or place sailing from) to (insert the name of the port or place, bound to) do solemnly, sincerely and truly swear (or affirm as the case may be) that the manifest of the cargo on board the said (insert denomination and name of the vessel) now delivered by me to the collector of this district, and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just and true account of all the goods, wares and merchandise now actually laden on board the said vessel, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said (insert denomination and name of vessel) previous to her sailing from this port, I will immediately report the same to the said collector. I do also swear (or affirm) that I verily believe the duties on all the foreign merchandise therein specified have been paid or secured, according to law, and that no part thereof is intended to be relanded within the United States, and that if by distress or other unavoidable accident it shall become necessary to reland the same, I will forthwith make a just and true report

thereof to the collector of the customs of the district wherein such distress or accident may happen. So help me God.

And the form of a clearance, to be granted to a ship or vessel on her departure to a foreign port or place, shall be as follows:

Form of clearance.

District of ss.

Port of

These are to certify all whom it doth concern, that master
or commander of the burthen tons, or thereabouts,
mounted with guns, navigated with men
built, and bound for having on board

hath here entered and cleared his said vessel according to law.

Given under our hands and seals, at the custom-house of
this day of one thousand and in the
year of the independence of the United States of America.

Provided, any thing to the contrary notwithstanding, that the collectors and other officers of the customs shall, and they are hereby directed to pay due regard to the inspection laws of the states in which they may respectively act, in such manner, that no vessel having on board goods liable to inspection, shall be cleared out until the master, or other proper person, shall have produced such certificate that all such goods have been duly inspected, as the laws of the respective states do or may require to be produced to collectors or other officers of the customs. *And provided*, that receipts for the payment of all legal fees which shall have accrued on any ship or vessel shall, before any clearance is granted, be produced to the collector or other officer aforesaid.

Vessels not to be cleared until the inspection laws of the states are complied with, and all legal fees paid.

SEC. 94. *And be it further enacted*, That the importer or importers of any horses, cattle, sheep, swine, or other useful beasts, imported into the United States for the purpose of breed, shall make entry for such horses, cattle, sheep, swine, or other useful beasts, as in the case of other goods, wares or merchandise, and obtain a permit for landing the same, and shall likewise make oath or affirmation, that they are actually imported for the purpose above mentioned; and any horses, cattle, sheep, swine, or other beasts, landed without the provisions above mentioned being fully complied with, shall be subject to seizure and forfeiture.

Beasts imported for breed to be entered, &c.

SEC. 95. *And be it further enacted*, That all matters directed by this act to be done to, or by the collector of a district, or by the naval officer thereof, shall and may be done to, and by the person, who in the cases specified in this act, is or may be authorized to act in the place or stead of the said collector, or of the said naval officer.

Substitutes may act in certain cases.

SEC. 96. *And be it further enacted*, That whenever an oath is required by this act, persons conscientiously scrupulous shall be permitted to affirm.

Affirmation may be made instead of oath.

SEC. 97. *And be it further enacted*, That the President of the United States be empowered, for the better securing the collection of the duties imposed on goods, wares and merchandise imported into the United States, and on the tonnage of ships or vessels, to cause to be built and equipped so many revenue cutters not exceeding ten, as may be necessary to be employed for the protection of the revenue, the expense whereof shall be paid out of the product of the duties on goods, wares and merchandise imported into the United States, and on the tonnage of ships or vessels.

Revenue cutters to be provided.

SEC. 98. *And be it further enacted*, That there shall be to each of the said revenue cutters, one captain or master, and not more than three lieutenants or mates, first, second, and third, and not more than seventy men, including non-commissioned officers, gunners and mariners. And the Secretary of the Treasury is hereby authorized to cause contracts to be made for the supply of rations for the officers and men of the said revenue cutters: *Provided*, that the said revenue cutters shall, whenever

Officers and men for the revenue cutters, &c.



Cutters shall co-operate with the navy.

How their officers are to be appointed.

To whose direction they shall be subject, and their duties.

New cutters to be provided in lieu of those unfit for service and the old ones to be sold.

Revenue boats may be provided.

Cutters and boats to be distinguished by an ensign and pendant.

the President of the United States shall so direct, co-operate with the navy of the United States, during which time, they shall be under the direction of the Secretary of the Navy, and the expenses thereof shall be defrayed by the agents of the Navy Department.

SEC. 99. *And be it further enacted,* That the officers of the said revenue cutters shall be appointed by the President of the United States, and shall respectively be deemed officers of the customs, and shall be subject to the direction of such collectors of the revenue, or other officers thereof, as from time to time shall be designated for that purpose; they shall have power and authority, and are hereby required and directed to go on board all ships or vessels, which shall arrive within the United States, or within four leagues of the coast thereof, if bound for the United States, and to search and examine the same, and every part thereof, and to demand, receive, and certify the manifests herein before required to be on board certain ships or vessels, and to affix and put proper fastenings on the hatches and other communications with the hold of any ship or vessel, and to remain on board the said ships and vessels, until they arrive at the port or place of their destination. It shall likewise be the duty of the master or other person having at any time the command of any of the said revenue cutters, to make a weekly return to the collector, or other officer of the district under whose direction they are placed, of the transactions of the cutter under their command, specifying therein, the vessels that have been boarded, their names and descriptions, the names of the masters, and from what port or place they last sailed, whether laden or in ballast, whether ships or vessels of the United States, or to what other nation belonging, and whether they have the necessary manifest or manifests of their cargoes on board, and generally all such matters as it may be necessary for the collectors or other officers of the customs to be made acquainted with; and the officers of the said cutters shall likewise execute and perform such other duties for the collection and security of the revenue, as from time to time shall be enjoined and directed by the Secretary of the Treasury, not contrary to law, and the provisions herein before contained.

SEC. 100. *And be it further enacted,* That the President be, and he is hereby authorized to cause other revenue cutters to be built or purchased, in lieu of such as are or shall from time to time become unfit for further service; and to cause such as are so become unfit for further service, to be sold at public auction, and the proceeds of such sales to be paid into the treasury of the United States. And the expense of purchasing other cutters as aforesaid, as well as all future expenses of building, purchasing or repairing revenue cutters, shall be paid out of the product of the duties on goods, wares or merchandise imported into the United States, and on the tonnage of ships or vessels.

SEC. 101. *And be it further enacted,* That the collectors of the respective districts may, with the approbation of the Secretary of the Treasury, provide and employ such small open row and sail boats, in each district, together with the number of persons to serve in them, as shall be necessary for the use of the surveyors and inspectors in going on board of ships or vessels and otherwise, for the better detection of frauds; the expense of which shall be defrayed out of the product of the duties.

SEC. 102. *And be it further enacted,* That the cutters and boats employed in the service of the revenue, shall be distinguished from other vessels, by an ensign and pendant, with such marks thereon as shall be prescribed and directed by the President of the United States; and in case any ship or vessel liable to seizure or examination shall not bring to, on being required, or being chased by any cutter or boat having displayed the pendant and ensign prescribed for vessels in the revenue service, it shall be lawful for the captain, master or other

person having command of such cutter or boat, to fire at or into such vessel which shall not bring to, after such pendant and ensign shall be hoisted, and a gun shall have been fired by such cutter or boat as a signal; and such captain, master or other person as aforesaid, and all persons acting by or under his direction, shall be indemnified from any penalties, or actions for damages for so doing; and if any person shall be killed or wounded by such firing, and the captain, master, or other person aforesaid, shall be prosecuted or arrested therefor, such captain, master or other person shall be forthwith admitted to bail. And if any ship, vessel or boat, not employed in the service of the revenue, shall, within the jurisdiction of the United States, carry or hoist any pendant or ensign prescribed for vessels in the service aforesaid, the master, or commander of the ship or vessel so offending shall forfeit and pay one hundred dollars.

They may fire at vessels refusing to bring to.

Penalty on other vessels or boats carrying the revenue ensign and pendant.

Sec. 103. *And be it further enacted*, That no beer, ale, or porter shall be brought into the United States by sea from any foreign port, or place, except in casks, or vessels, the capacity whereof shall not be less than forty gallons beer measure, or in packages containing not less than six dozen bottles, on pain of forfeiture of the said beer, ale, or porter, and the ship or vessel in which the same shall be brought; nor shall any refined lump or loaf sugar be imported into the United States, from any foreign port or place by sea, except in ships or vessels of one hundred and twenty tons burthen and upwards, and in casks or packages containing each not less than six hundred pounds weight; nor shall any distilled spirits (arrack and sweet cordials excepted) be imported, or brought into the United States, except in casks or vessels of the capacity of ninety gallons wine measure and upwards, nor in casks or vessels which have been marked pursuant to any law of the United States, on pain of forfeiture of the said refined lump and loaf sugar, and distilled spirits, imported contrary to the provisions herein described, together with the ship, or vessel, in which they shall be so imported: *Provided*, that nothing contained in this act shall be construed to forfeit any spirits for being imported, or brought into the United States, in other casks or vessels as aforesaid, or the ship or vessel in which they shall be brought, if such spirits shall be for the use of the seamen, on board such ship or vessel, and shall not exceed the quantity of four gallons for each seaman.

Vessels and packages in which alone certain articles are to be imported.

Saving of spirits for the use of the seamen.

Sec. 104. *And be it further enacted*, That for the purpose of conforming this act to certain stipulations contained in treaties made and ratified under the authority of the United States, it is hereby declared, that it shall at all times be free to British subjects, and also to the Indians dwelling on either side of the boundary line of the United States, as settled by the treaty of peace, freely to pass and repass, by land or inland navigation, into and from the territories of the United States, and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with the citizens of the United States: *Provided*, that nothing herein contained shall be construed to justify the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea; and all goods and merchandise, the importation of which into the United States shall not be wholly prohibited, shall and may freely, for the purposes of commerce, be brought into the same, in manner aforesaid, by British subjects, from the territories of the king of Great Britain, in America; and such goods and merchandise shall be subject to no higher or other duties, than are or shall be payable by the citizens of the United States, on the importation of the same in American vessels into the Atlantic ports of the United States: And all goods not prohibited to be exported from the United States, may, in manner aforesaid, be carried out of the United States into the territories aforesaid.

Privileges of British subjects and Indians in conformity with treaties.

No duties on
peltries or
goods of In-
dians.

Further privi-
leges of British
subjects.

In the north-
ern, and north-
western dis-
tricts, &c. im-
portations may
be made in ves-
sels, &c. of any
kind whatever.
Provisions of
this act extend-
ed to those dis-
tricts.

Entry to be
made of goods
to be carried
over portages.

Which entry
shall be verified
on oath.

Form of the
oath.

SEC. 105. *And be it further enacted*, That no duty shall be levied or collected on the importation of peltries brought into the territories of the United States, nor on the proper goods and effects of whatever nature, of Indians passing, or repassing the boundary line aforesaid, unless the same be goods in bales or other large packages unusual among Indians, which shall not be considered as goods belonging bona fide to Indians, nor be entitled to the exemption from duty aforesaid. And no higher or other tolls or rates of ferriage, than what are or shall be payable by citizens of the United States, shall be demanded of British subjects, and no duties shall be payable on any goods, which shall merely be carried over any of the portages or carrying places within the territories of the United States, for the purpose of being immediately re-embarked, and carried to some other place or places: *Provided*, that this last mentioned exemption from duty shall extend only to such goods as are carried in the usual and direct road across such portages and carrying places, and are not attempted to be in any manner sold or exchanged during their passage across the same. And it shall be lawful for citizens of the United States, and for all other persons, to import any goods or merchandise, of which the importation shall not be entirely prohibited, into the districts, which are or may be established on the northern and north-western boundaries of the United States, and on the rivers Ohio and Mississippi, in vessels or boats of any burthen, and in rafts or carriages of any kind or nature whatsoever.

SEC. 106. *And be it further enacted*, That all vessels, boats, rafts, and carriages, of what kind and nature soever, arriving in the districts aforesaid, containing goods, wares or merchandise, subject to duties on being imported into any port of the United States, shall be reported to the collector, or other chief officer of the customs at the port of entry, in the district into which they shall be so imported; and such goods shall be accompanied with like manifests, and like entries shall be made, by the persons having charge of any vessels, boats, rafts and carriages aforesaid, and by the owners or consignees of the goods, wares and merchandise, laden on board the same; and the powers and duties of the officers of the customs shall be exercised and discharged in the districts last mentioned, in like manner as is herein before directed and prescribed, in respect to goods, wares and merchandise imported into the United States, in vessels from the sea—and generally, all importations as aforesaid shall be subject to like regulations, penalties and forfeitures as in other districts, except as is herein after specially provided.

SEC. 107. *And be it further enacted*, That when any goods, wares, or merchandise subject to duties, shall be imported into any of the districts before mentioned, and which shall be reported as being destined to be carried over any of the portages or carrying places within the territories of the United States, for the purposes of being immediately re-embarked, and carried to some other port or place, it shall be the duty of the owner or consignee of the goods, wares, or merchandise intended to be transported as aforesaid, to make entry thereof, as particularly as is herein before directed and prescribed, in respect to the like goods, wares and merchandise, when entered for the payment of duties, and moreover specifying in such entry the route, portage and carrying place, by and over which it is intended to transport the same; which entry shall be verified on oath or affirmation in manner following:

District of

Port of

I (here insert the name of the person making the entry) do solemnly, sincerely and truly swear, (or affirm) that the entry now subscribed with my name, and delivered by me to the collector of (insert the name of the district) contains a just and true account of all the goods, wares and merchandise, contained in the several packages therein mentioned;

that they are brought into this district, solely for the purpose of being carried and transported by the way of (here insert the portage or carrying place) with intention of being immediately re-embarked and carried without the limits of the United States; and are not intended, directly, or indirectly, to be sold, exchanged, or consumed, within the limits of the United States; and, I do further swear, (or affirm) that if I shall hereafter know, or discover, that the whole, or any part of the said goods, wares or merchandise, shall have been sold, alienated, exchanged, or consumed, within the limits of the United States, I will immediately report the same, with the circumstances thereof, truly to the collector of this district. So help me God.

Sec. 108. *And be it further enacted*, That the collector, who shall receive any entry as aforesaid, shall cause due examination, inspection and search to be made, in like manner as is herein before prescribed, in respect to importations made in vessels arriving by the sea, or intended to be exported from the United States, and, being satisfied therewith, shall thereupon grant a certificate or protection for the said goods, wares or merchandise which shall accompany the same, and which certificate or protection shall be of the form following, to wit:

District of ss.

Port of,

It is hereby certified, that (here insert the name of the person making entry) has made entry in this office, according to law, of the following merchandise (here insert the particulars of the packages and merchandise, and the several marks, numbers and contents thereof as in the entry) and has made oath, that the said merchandise are intended to be transported by the route of (here insert the portage or carrying place) to (here insert the proposed place of re-embarkation) for the purpose of being transported without the limits of the United States. Now therefore, this certificate is to serve as a protection for the said merchandise, during the transportation thereof by the route aforesaid: *Provided*, that the said merchandise, or any part thereof are not and shall not be unpacked, alienated, sold or consumed within the limits of the United States, or be transported by any other route than is above specified, in either of which cases the said merchandise may be seized and forfeited, this certificate and protection notwithstanding.

As witness my hand and seal the day and year above mentioned.

A. B. Collector.

And no certificate as aforesaid shall be in force for any term exceeding six months from the date thereof.

Sec. 109. *And be it further enacted*; That if any person having the charge, or being concerned in the transportation of any goods, wares or merchandise, entered as aforesaid, for the purpose of being transported across any of the portages or carrying places within the limits of the United States, and to be delivered without the limits thereof, shall, with intent to defraud the revenue, break open or unpack any part of the said merchandise, or shall sell, exchange or consume the same, or with like intent shall break or deface any seal or fastening, placed thereon by any officer of the revenue, or if any person whatever shall deface, alter or forge any certificate, granted for the protection of merchandise transported as aforesaid, each and every person so offending, shall forfeit and pay five hundred dollars, and shall be imprisoned not less than one nor more than six months, at the discretion of the court before which such person shall be convicted.

Sec. 110. *And be it further enacted*, That nothing contained in this act shall be construed to exempt the masters or owners of vessels from making and subscribing any oaths or affirmations required by any laws of the United States, not immediately relating to the collection of

Collector to make examination, and thereupon grant a protection for the goods.

Form of the protection.

Penalty on fraudulently opening the merchandise, selling it, &c.

This act not to exempt from certain oaths.



the duties on the importation of goods, wares and merchandise into the United States.

No forfeiture to be incurred where the forms of documents are substantially complied with:—

They may be varied by additions.

Repeal of the former acts.

1790, ch. 35.

SEC. 111. *And be it further enacted*; That in cases where the forms of official documents, as prescribed by this act, shall be substantially complied with and observed, according to the true spirit, meaning and intent thereof, no penalty or forfeiture shall be incurred by a deviation therefrom; and the officers of the department of the treasury, according to their respective powers and duties, shall and may from time to time prescribe additions to the said forms, for the purpose of adapting the same to any alterations which may be made to the rates of duties on the importation of goods, wares and merchandise, and on the tonnage of ships and vessels, and for the better collection and payment of the said duties:—*Provided however*, that it shall not be competent for the said officers to prescribe any form or regulations incompatible with or contravening the special provisions of this act.

SEC. 112. *And be it further enacted*, That from and after the thirtieth day of June next ensuing, the act of Congress passed on the fourth day of August in the year one thousand seven hundred and ninety, entitled "An act to provide more effectually for the collection of the duties on goods, wares and merchandise imported into the United States, and on the tonnage of ships and vessels," and also all other acts or parts of acts, coming within the purview of this act, shall be repealed and thenceforth cease to operate, except as to the continuance of the officers appointed in pursuance of the said act or parts of acts; except also as to the recovery and receipt of such duties on goods, wares and merchandise, and on the tonnage of ships or vessels, as shall have accrued; and as to the payment of drawbacks, bounties and allowances upon the exportation of goods, wares and merchandise, and as to the recovery and distribution of fines, penalties and forfeitures, which shall have been incurred before and on the said day; subject nevertheless, in respect to the collection of duties, to the alterations contained and expressed in the present act.

APPROVED, March 2, 1799.

STATUTE III.

March 2, 1799.

CHAP. XXIII.—*An Act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes.* (a)

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That

(a) The acts which have been passed relating to the compensation of officers of the customs, which are obsolete, have been: An act to provide more effectually for the collection of the duties imposed by law on goods, wares, and merchandise, imported into the United States, and on the tonnage of ships and vessels, August 4, 1790, chap. 35, sec. 52, 53, 54; an act making further provisions relative to the revenue cutters, May 6, 1796, chap. 22, sec. 1, 2; an act in addition to an act entitled, "An act supplementary to the act entitled, 'An act to provide more effectually for the collection of duties on goods, wares, and merchandise, imported into the United States, and on the tonnage of ships and vessels,'" May 27, 1796, chap. 35, sec. 3; an act relative to the compensation and duties of certain officers employed in the collection of imposts and tonnage, March 3, 1797, chap. 9; an act establishing an annual salary for the surveyor of Gloucester, July 14, 1798, chap. 73; an act to increase the compensation allowed by law to inspectors, measurers, weighers, and gaugers, employed in the collection of the customs, April 26, 1816, chap. 95; an act respecting the compensation of the collectors therein mentioned, March 3, 1817, chap. 49; an act further to establish the compensation of officers of the customs, and to alter certain collection districts, and for other purposes, May 7, 1822, chap. 107, sec. 6, 7, 8, 9, 10, 12, 13, 15, 16, 18, 19.

The acts providing for the compensation to collectors and other officers of the customs in force, are: An act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage, and for other purposes, March 2, 1799, chap. 23; an act supplementary to an act entitled, "An act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," May 10, 1800; an act providing for the accommodation of persons concerned in certain fisheries therein mentioned, March 16, 1802, chap. 11, sec. 3; an act to amend "an act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," April 30, 1802, chap. 37; an act relative to the compensation of cer-



Proof-of-Claim – B. 5 / 8

The Emancipation Proclamation.

January 1, 1863.

A transcription

by the President of the Untied States of America:

Abraham Lincoln

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Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder



224

:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

10 / 28

The Emancipation Proclamation

January 1, 1863

A Transcription

By the President of the United States of America:

A Proclamation.

Whereas, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

"That the Executive will, on the first day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be, in good faith, represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such State shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States."

Now, therefore I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this first day of January, in the year of our Lord one thousand eight hundred and sixty-three, and in accordance with my purpose so to do publicly proclaimed for the full period of one hundred days, from the day first above mentioned, order and designate as the States and parts of States wherein the people thereof respectively, are this day in rebellion against the United States, the following, to wit:

Arkansas, Texas, Louisiana, (except the Parishes of St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James Ascension, Assumption, Terrebonne, Lafourche, St. Mary, St. Martin, and Orleans, including the City of New Orleans) Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia, (except the forty-eight counties designated as West Virginia, and also the counties of Berkley, Accomac, Northampton, Elizabeth City, York, Princess Ann, and Norfolk, including the cities of Norfolk and Portsmouth[]), and which excepted parts, are for the present, left precisely as if this proclamation were not issued.



And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.

And I further declare and make known, that such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this first day of January, in the year of our Lord one thousand eight hundred and sixty three, and of the Independence of the United States of America the eighty-seventh.

By the President: ABRAHAM LINCOLN
WILLIAM H. SEWARD, Secretary of State.

Proof-of-Claim – B. 6 / 8

General Orders No. 100: The Lieber Code
Instruction for the Government of the Armies of the
United States in the Field
promulgated by President-Abraham-Lincoln, 24 April
1763

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:Procurator-Order: 7009 1410 0000 7868 5802

INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD

Prepared by Francis Lieber, promulgated as General Orders No. 100 by President Lincoln, 24 April 1863.

Instructions for the Government of Armies of the United States in the Field, prepared by Francis Lieber, LL.D., Originally Issued as General Orders No. 100, Adjutant General's Office, 1863, Washington 1898: Government Printing Office.

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SECTION I

Martial Law - Military jurisdiction - Military necessity - Retaliation

Article 1.

A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the Martial Law of the invading or occupying army, whether any proclamation declaring



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Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its Martial Law.

Art. 2.

Martial Law does not cease during the hostile occupation, except by special proclamation, ordered by the commander in chief; or by special mention in the treaty of peace concluding the war, when the occupation of a place or territory continues beyond the conclusion of peace as one of the conditions of the same.

Art. 3.

Martial Law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation.

The commander of the forces may proclaim that the administration of all civil and penal law shall continue either wholly or in part, as in times of peace, unless otherwise ordered by the military authority.

Art. 4.

Martial Law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not Martial Law: it is the abuse of the power which that law confers. As Martial Law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity - virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

Art. 5.

Martial Law should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed - even in the commander's own country - when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion.



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To save the country is paramount to all other considerations.

Art. 6.

All civil and penal law shall continue to take its usual course in the enemy's places and territories under Martial Law, unless interrupted or stopped by order of the occupying military power; but all the functions of the hostile government - legislative executive, or administrative - whether of a general, provincial, or local character, cease under Martial Law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

Art. 7.

Martial Law extends to property, and to persons, whether they are subjects of the enemy or aliens to that government.

Art. 8.

Consuls, among American and European nations, are not diplomatic agents. Nevertheless, their offices and persons will be subjected to Martial Law in cases of urgent necessity only: their property and business are not exempted. Any delinquency they commit against the established military rule may be punished as in the case of any other inhabitant, and such punishment furnishes no reasonable ground for international complaint.

Art. 9.

The functions of Ambassadors, Ministers, or other diplomatic agents accredited by neutral powers to the hostile government, cease, so far as regards the displaced government; but the conquering or occupying power usually recognizes them as temporarily accredited to itself.

Art. 10.

Martial Law affects chiefly the police and collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety, and the safety of its operations.

Art. 11.

The law of war does not only disclaim all cruelty and bad faith concerning engagements concluded with the enemy during the war, but also the breaking of stipulations solemnly contracted by the belligerents in time of peace, and avowedly intended to remain in force in case of war between the contracting powers.



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It disclaims all extortions and other transactions for individual gain; all acts of private revenge, or connivance at such acts.

Offenses to the contrary shall be severely punished, and especially so if committed by officers.

Art. 12.

Whenever feasible, Martial Law is carried out in cases of individual offenders by Military Courts; but sentences of death shall be executed only with the approval of the chief executive, provided the urgency of the case does not require a speedier execution, and then only with the approval of the chief commander.

Art. 13.

Military jurisdiction is of two kinds: First, that which is conferred and defined by statute; second, that which is derived from the common law of war. Military offenses under the statute law must be tried in the manner therein directed; but military offenses which do not come within the statute must be tried and punished under the common law of war. The character of the courts which exercise these jurisdictions depends upon the local laws of each particular country.

In the armies of the United States the first is exercised by courts-martial, while cases which do not come within the "Rules and Articles of War," or the jurisdiction conferred by statute on courts-martial, are tried by military commissions.

Art. 14.

Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

Art. 15.

Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up



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arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

Art. 16.

Military necessity does not admit of cruelty - that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

Art. 17.

War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.

Art. 18.

When a commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender.

Art. 19.

Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

Art. 20.

Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civilized existence that men live in political, continuous societies, forming organized units, called states or nations, whose constituents bear, enjoy, suffer, advance and retrograde together, in peace and in war.

Art. 21.

The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war.



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Art. 22.

Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.

Art. 23.

Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of a vigorous war.

Art. 24.

The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection, and every disruption of family ties. Protection was, and still is with uncivilized people, the exception.

Art. 25.

In modern regular wars of the Europeans, and their descendants in other portions of the globe, protection of the inoffensive citizen of the hostile country is the rule; privation and disturbance of private relations are the exceptions.

Art. 26.

Commanding generals may cause the magistrates and civil officers of the hostile country to take the oath of temporary allegiance or an oath of fidelity to their own victorious government or rulers, and they may expel everyone who declines to do so. But whether they do so or not, the people and their civil officers owe strict obedience to them as long as they hold sway over the district or country, at the peril of their lives.

Art. 27.

The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage



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Art. 28.

Retaliation will, therefore, never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and moreover, cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution.

Unjust or inconsiderate retaliation removes the belligerents farther and farther from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages.

Art. 29.

Modern times are distinguished from earlier ages by the existence, at one and the same time, of many nations and great governments related to one another in close intercourse.

Peace is their normal condition; war is the exception. The ultimate object of all modern war is a renewed state of peace.

The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.

Art. 30.

Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defense against wrong; and no conventional restriction of the modes adopted to injure the enemy is any longer admitted; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honor.

SECTION II

Public and private property of the enemy - Protection of persons, and especially of women, of religion, the arts and sciences - Punishment of crimes against the inhabitants of hostile countries.

Art. 31.

A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters for its own benefit or of that of its government all the revenues of real property belonging to the hostile government or nation. The title to such real property remains in abeyance during military occupation, and until the conquest is made complete.



Art. 32.

A victorious army, by the martial power inherent in the same, may suspend, change, or abolish, as far as the martial power extends, the relations which arise from the services due, according to the existing laws of the invaded country, from one citizen, subject, or native of the same to another.

The commander of the army must leave it to the ultimate treaty of peace to settle the permanency of this change.

Art. 33.

It is no longer considered lawful - on the contrary, it is held to be a serious breach of the law of war - to force the subjects of the enemy into the service of the victorious government, except the latter should proclaim, after a fair and complete conquest of the hostile country or district, that it is resolved to keep the country, district, or place permanently as its own and make it a portion of its own country.

Art. 34.

As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character such property is not to be considered public property in the sense of paragraph 31; but it may be taxed or used when the public service may require it.

Art. 35.

Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

Art. 36.

If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace.



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In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured.

Art. 37.

The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women; and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, lands, boats or ships, and churches, for temporary and military uses

Art. 38.

Private property, unless forfeited by crimes or by offenses of the owner, can be seized only by way of military necessity, for the support or other benefit of the army or of the United States.

If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity.

Art. 39.

The salaries of civil officers of the hostile government who remain in the invaded territory, and continue the work of their office, and can continue it according to the circumstances arising out of the war - such as judges, administrative or police officers, officers

of city or communal governments - are paid from the public revenue of the invaded territory, until the military government has reason wholly or partially to discontinue it. Salaries or incomes connected with purely honorary titles are always stopped.

Art. 40.

There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations which is called the law and usages of war on land.

Art. 41.

All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field.



Art. 42.

Slavery, complicating and confounding the ideas of property, (that is of a thing,) and of personality, (that is of humanity,) exists according to municipal or local law only. The law of nature and nations has never acknowledged it. The digest of the Roman law enacts the early dictum of the pagan jurist, that "so far as the law of nature is concerned, all men are equal." Fugitives escaping from a country in which they were slaves, villains, or serfs, into another country, have, for centuries past, been held free and acknowledged free by judicial decisions of European countries, even though the municipal law of the country in which the slave had taken refuge acknowledged slavery within its own dominions.

Art. 43.

Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman. To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made free by the law of war is under the shield of the law of nations, and the former owner or State can have, by the law of postliminy, no belligerent lien or claim of service.

Art. 44.

All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense.

A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.

Art. 45.

All captures and booty belong, according to the modern law of war, primarily to the government of the captor.

Prize money, whether on sea or land, can now only be claimed under local law.

Art. 46.

Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate. Offenses to the contrary committed by commissioned officers will be punished with cashiering or such other punishment as the nature of the offense may require; if by soldiers, they shall be punished according to the nature of the offense.

Art. 47.

Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred.

SECTION III

Deserters - Prisoners of war - Hostages - Booty on the battle-field.

Art. 48.

Deserters from the American Army, having entered the service of the enemy, suffer death if they fall again into the hands of the United States, whether by capture, or being delivered up to the American Army; and if a deserter from the enemy, having taken service in the Army of the United States, is captured by the enemy, and punished by them with death or otherwise, it is not a breach against the law and usages of war, requiring redress or retaliation.

Art. 49.

A prisoner of war is a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation.

All soldiers, of whatever species of arms; all men who belong to the rising en masse of the hostile country; all those who are attached to the army for its efficiency and promote directly the object of the war, except such as are hereinafter provided for; all disabled men or officers on the field or elsewhere, if captured; all enemies who have thrown away their arms and ask for quarter, are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.



Art. 50.

Moreover, citizens who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war, and be detained as such.

The monarch and members of the hostile reigning family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government, are, if captured on belligerent ground, and if unprovided with a safe conduct granted by the captor's government, prisoners of war.

Art. 51.

If the people of that portion of an invaded country which is not yet occupied by the enemy, or of the whole country, at the approach of a hostile army, rise, under a duly authorized levy en masse to resist the invader, they are now treated as public enemies, and, if captured, are prisoners of war.

Art. 52.

No belligerent has the right to declare that he will treat every captured man in arms of a levy en masse as a brigand or bandit. If, however, the people of a country, or any portion of the same, already occupied by an army, rise against it, they are violators of the laws of war, and are not entitled to their protection.

Art. 53.

The enemy's chaplains, officers of the medical staff, apothecaries, hospital nurses and servants, if they fall into the hands of the American Army, are not prisoners of war, unless the commander has reasons to retain them. In this latter case; or if, at their own desire, they are allowed to remain with their captured companions, they are treated as prisoners of war, and may be exchanged if the commander sees fit.

Art. 54

A hostage is a person accepted as a pledge for the fulfillment of an agreement concluded between belligerents during the war, or in consequence of a war. Hostages are rare in the present age.



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Art. 55.

If a hostage is accepted, he is treated like a prisoner of war, according to rank and condition, as circumstances may admit.

Art. 56.

A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

Art. 57.

So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts are not individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as soldiers, will not be treated by him as public enemies.

Art. 58.

The law of nations knows of no distinction of color, and if an enemy of the United States should enslave and sell any captured persons of their army, it would be a case for the severest retaliation, if not redressed upon complaint.

The United States cannot retaliate by enslavement; therefore death must be the retaliation for this crime against the law of nations.

Art. 59.

A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities.

All prisoners of war are liable to the infliction of retaliatory measures.

Art. 60.

It is against the usage of modern war to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it impossible to cumber himself with prisoners.



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Art. 61.

Troops that give no quarter have no right to kill enemies already disabled on the ground, or prisoners captured by other troops.

Art. 62.

All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.

Art. 63.

Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter.

Art. 64.

If American troops capture a train containing uniforms of the enemy, and the commander considers it advisable to distribute them for use among his men, some striking mark or sign must be adopted to distinguish the American soldier from the enemy.

Art. 65.

The use of the enemy's national standard, flag, or other emblem of nationality, for the purpose of deceiving the enemy in battle, is an act of perfidy by which they lose all claim to the protection of the laws of war.

Art. 66.

Quarter having been given to an enemy by American troops, under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death if, within three days after the battle, it be discovered that he belongs to a corps which gives no quarter.

Art. 67.

The law of nations allows every sovereign government to make war upon another sovereign state, and, therefore, admits of no rules or laws different from those of regular warfare, regarding the treatment of prisoners of war, although they may belong to the army of a government which the captor may consider as a wanton and unjust assailant.



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Art. 68.

Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life is not lawful.

Art. 69.

Outposts, sentinels, or pickets are not to be fired upon, except to drive them in, or when a positive order, special or general, has been issued to that effect.

Art. 70.

The use of poison in any manner, be it to poison wells, or food, or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the law and usages of war.

Art. 71.

Whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States, or is an enemy captured after having committed his misdeed.

Art. 72.

Money and other valuables on the person of a prisoner, such as watches or jewelry, as well as extra clothing, are regarded by the American Army as the private property of the prisoner, and the appropriation of such valuables or money is considered dishonorable, and is prohibited. Nevertheless, if large sums are found upon the persons of prisoners, or in their possession, they shall be taken from them, and the surplus, after providing for their own support, appropriated for the use of the army, under the direction of the commander, unless otherwise ordered by the government. Nor can prisoners claim, as private property, large sums found and captured in their train, although they have been placed in the private luggage of the prisoners.

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Art. 73.

All officers, when captured, must surrender their side arms to the captor. They may be restored to the prisoner in marked cases, by the commander, to signalize admiration of his distinguished bravery or approbation of his humane treatment of prisoners before his capture. The captured officer to whom they may be restored can not wear them during captivity.

Art. 74.

A prisoner of war, being a public enemy, is the prisoner of the government, and not of the captor. No ransom can be paid by a prisoner of war to his individual captor or to any officer in command. The government alone releases captives, according to rules prescribed by itself.

Art. 75.

Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity. The confinement and mode of treating a prisoner may be varied during his captivity according to the demands of safety.

Art. 76.

Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

Art. 77.

A prisoner of war who escapes may be shot or otherwise killed in his flight; but neither death nor any other punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security shall be used after an unsuccessful attempt at escape.

If, however, a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow prisoners or other persons.



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Art. 78.

If prisoners of war, having given no pledge nor made any promise on their honor, forcibly or otherwise escape, and are captured again in battle after having rejoined their own army, they shall not be punished for their escape, but shall be treated as simple prisoners of war, although they will be subjected to stricter confinement.

Art. 79.

Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

Art. 80.

Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information or to punish them for having given false information.

SECTION IV

Partisans - Armed enemies not belonging to the hostile army - Scouts - Armed prowlers - War-rebels

Art. 81.

Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached from the main body for the purpose of making inroads into the territory occupied by the enemy. If captured, they are entitled to all the privileges of the prisoner of war.

Art. 82.

Men, or squads of men, who commit hostilities, whether by fighting, or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers - such men, or squads of men, are not public enemies, and, therefore, if captured, are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers or pirates.



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Art. 83.

Scouts, or single soldiers, if disguised in the dress of the country or in the uniform of the army hostile to their own, employed in obtaining information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.

Art. 84.

Armed prowlers, by whatever names they may be called, or persons of the enemy's territory, who steal within the lines of the hostile army for the purpose of robbing, killing, or of destroying bridges, roads or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoner of war.

Art. 85.

War-rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they if discovered and secured before their conspiracy has matured to an actual rising or armed violence.

SECTION V

Safe-conduct - Spies - War-traitors - Captured messengers - Abuse of the flag of truce

Art. 86.

All intercourse between the territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule, to be observed without special proclamation.

Exceptions to this rule, whether by safe-conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government, or by the highest military authority.

Contraventions of this rule are highly punishable.

Art. 87.

Ambassadors, and all other diplomatic agents of neutral powers, accredited to the enemy, may receive safe-conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary, and unless they may reach the place of their destination



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conveniently by another route. It implies no international affront if the safe-conduct is declined. Such passes are usually given by the supreme authority of the State, and not by subordinate officers.

Art. 88.

A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy.

The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.

Art. 89.

If a citizen of the United States obtains information in a legitimate manner, and betrays it to the enemy, be he a military or civil officer, or a private citizen, he shall suffer death.

Art. 90.

A traitor under the law of war, or a war-traitor, is a person in a place or district under Martial Law who, unauthorized by the military commander, gives information of any kind to the enemy, or holds intercourse with him.

Art. 91.

The war-traitor is always severely punished. If his offense consists in betraying to the enemy anything concerning the condition, safety, operations, or plans of the troops holding or occupying the place or district, his punishment is death.

Art. 92.

If the citizen or subject of a country or place invaded or conquered gives information to his own government, from which he is separated by the hostile army, or to the army of his government, he is a war-traitor, and death is the penalty of his offense.

Art. 93.

All armies in the field stand in need of guides, and impress them if they cannot obtain them otherwise.

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Art. 94.

No person having been forced by the enemy to serve as guide is punishable for having done so.

Art. 95.

If a citizen of a hostile and invaded district voluntarily serves as a guide to the enemy, or offers to do so, he is deemed a war-traitor, and shall suffer death.

Art. 96.

A citizen serving voluntarily as a guide against his own country commits treason, and will be dealt with according to the law of his country.

Art. 97.

Guides, when it is clearly proved that they have misled intentionally, may be put to death.

Art. 98.

An unauthorized or secret communication with the enemy is considered treasonable by the law of war.

Foreign residents in an invaded or occupied territory, or foreign visitors in the same, can claim no immunity from this law. They may communicate with foreign parts, or with the inhabitants of the hostile country, so far as the military authority permits, but no further. Instant expulsion from the occupied territory would be the very least punishment for the infraction of this rule.

Art. 99.

A messenger carrying written dispatches or verbal messages from one portion of the army, or from a besieged place, to another portion of the same army, or its government, if armed, and in the uniform of his army, and if captured, while doing so, in the territory occupied by the enemy, is treated by the captor as a prisoner of war. If not in uniform, nor a soldier, the circumstances connected with his capture must determine the disposition that shall be made of him.

Art. 100.

A messenger or agent who attempts to steal through the territory occupied by the enemy, to further, in any manner, the interests of the enemy, if captured, is not entitled to the privileges of the prisoner of war, and may be dealt with according to the circumstances of the case.



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Art. 101.

While deception in war is admitted as a just and necessary means of hostility, and is consistent with honorable warfare, the common law of war allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous, and it is difficult to guard against them.

Art. 102.

The law of war, like the criminal law regarding other offenses, makes no difference on account of the difference of sexes, concerning the spy, the war-traitor, or the war-rebel.

Art. 103.

Spies, war-traitors, and war-rebels are not exchanged according to the common law of war. The exchange of such persons would require a special cartel, authorized by the government, or, at a great distance from it, by the chief commander of the army in the field.

Art. 104.

A successful spy or war-traitor, safely returned to his own army, and afterwards captured as an enemy, is not subject to punishment for his acts as a spy or war-traitor, but he may be held in closer custody as a person individually dangerous.

SECTION VI

Exchange of prisoners - Flags of truce - Flags of protection

Art. 105.

Exchanges of prisoners take place - number for number - rank for rank wounded for wounded - with added condition for added condition - such, for instance, as not to serve for a certain period.

Art. 106.

In exchanging prisoners of war, such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank as may be agreed upon by cartel, which requires the sanction of the government, or of the commander of the army in the field.

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Art. 107.

A prisoner of war is in honor bound truly to state to the captor his rank; and he is not to assume a lower rank than belongs to him, in order to cause a more advantageous exchange, nor a higher rank, for the purpose of obtaining better treatment.

Offenses to the contrary have been justly punished by the commanders of released prisoners, and may be good cause for refusing to release such prisoners.

Art. 108.

The surplus number of prisoners of war remaining after an exchange has taken place is sometimes released either for the payment of a stipulated sum of money, or, in urgent cases, of provision, clothing, or other necessities.

Such arrangement, however, requires the sanction of the highest authority.

Art. 109.

The exchange of prisoners of war is an act of convenience to both belligerents. If no general cartel has been concluded, it cannot be demanded by either of them. No belligerent is obliged to exchange prisoners of war.

A cartel is voidable as soon as either party has violated it.

Art. 110.

No exchange of prisoners shall be made except after complete capture, and after an accurate account of them, and a list of the captured officers, has been taken.

Art. 111.

The bearer of a flag of truce cannot insist upon being admitted. He must always be admitted with great caution. Unnecessary frequency is carefully to be avoided.

Art. 112.

If the bearer of a flag of truce offer himself during an engagement, he can be admitted as a very rare exception only. It is no breach of good faith to retain such flag of truce, if admitted during the engagement. Firing is not required to cease on the appearance of a flag of truce in battle.

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Art. 113.

If the bearer of a flag of truce, presenting himself during an engagement, is killed or wounded, it furnishes no ground of complaint whatever.

Art. 114.

If it be discovered, and fairly proved, that a flag of truce has been abused for surreptitiously obtaining military knowledge, the bearer of the flag thus abusing his sacred character is deemed a spy.

So sacred is the character of a flag of truce, and so necessary is its sacredness, that while its abuse is an especially heinous offense, great caution is requisite, on the other hand, in convicting the bearer of a flag of truce as a spy.

Art. 115.

It is customary to designate by certain flags (usually yellow) the hospitals in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in battles, when hospitals are situated within the field of the engagement.

Art. 116.

Honorable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared. An honorable belligerent allows himself to be guided by flags or signals of protection as much as the contingencies and the necessities of the fight will permit.

Art. 117.

It is justly considered an act of bad faith, of infamy or fiendishness, to deceive the enemy by flags of protection. Such act of bad faith may be good cause for refusing to respect such flags.

Art. 118.

The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories, or precious libraries, so that their destruction may be avoided as much as possible.

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SECTION VII

Parole

Art. 119.

Prisoners of war may be released from captivity by exchange, and, under certain circumstances, also by parole.

Art. 120.

The term Parole designates the pledge of individual good faith and honor to do, or to omit doing, certain acts after he who gives his parole shall have been dismissed, wholly or partially, from the power of the captor.

Art. 121.

The pledge of the parole is always an individual, but not a private act.

Art. 122.

The parole applies chiefly to prisoners of war whom the captor allows to return to their country, or to live in greater freedom within the captor's country or territory, on conditions stated in the parole.

Art. 123.

Release of prisoners of war by exchange is the general rule; release by parole is the exception.

Art. 124.

Breaking the parole is punished with death when the person breaking the parole is captured again.

Accurate lists, therefore, of the paroled persons must be kept by the belligerents.

Art. 125.

When paroles are given and received there must be an exchange of two written documents, in which the name and rank of the paroled individuals are accurately and truthfully stated.

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Art. 126.

Commissioned officers only are allowed to give their parole, and they can give it only with the permission of their superior, as long as a superior in rank is within reach.

Art. 127.

No noncommissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individuals giving them to the punishment of death as deserters. The only admissible exception is where individuals, properly separated from their commands, have suffered long confinement without the possibility of being paroled through an officer.

Art. 128.

No paroling on the battlefield; no paroling of entire bodies of troops after a battle; and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted, or of any value. Art. 129. In capitulations for the surrender of strong places or fortified camps the commanding officer, in cases of urgent necessity, may agree that the troops under his command shall not fight again during the war, unless exchanged.

Art. 130.

The usual pledge given in the parole is not to serve during the existing war, unless exchanged.

This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war. These cases of breaking the parole are patent acts, and can be visited with the punishment of death; but the pledge does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service for which the paroled officer may be employed.

Art. 131.

If the government does not approve of the parole, the paroled officer must return into captivity, and should the enemy refuse to receive him, he is free of his parole.

Art. 132.

A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.



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Art. 133.

No prisoner of war can be forced by the hostile government to parole himself, and no government is obliged to parole prisoners of war, or to parole all captured officers, if it paroles any. As the pledging of the parole is an individual act, so is paroling, on the other hand, an act of choice on the part of the belligerent.

Art. 134.

The commander of an occupying army may require of the civil officers of the enemy, and of its citizens, any pledge he may consider necessary for the safety or security of his army, and upon their failure to give it he may arrest, confine, or detain them.

SECTION VIII

Armistice - Capitulation

Art. 135.

An armistice is the cessation of active hostilities for a period agreed between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties.

Art. 136.

If an armistice be declared, without conditions, it extends no further than to require a total cessation of hostilities along the front of both belligerents.

If conditions be agreed upon, they should be clearly expressed, and must be rigidly adhered to by both parties. If either party violates any express condition, the armistice may be declared null and void by the other.

Art. 137.

An armistice may be general, and valid for all points and lines of the belligerents, or special, that is, referring to certain troops or certain localities only.

An armistice may be concluded for a definite time; or for an indefinite time, during which either belligerent may resume hostilities on giving the notice agreed upon to the other.

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Art. 138.

The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary to a treaty of peace, or to prepare during the armistice for a more vigorous prosecution of the war, does in no way affect the character of the armistice itself.

Art. 139.

An armistice is binding upon the belligerents from the day of the agreed commencement; but the officers of the armies are responsible from the day only when they receive official information of its existence.

Art. 140.

Commanding officers have the right to conclude armistices binding on the district over which their command extends, but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known to the enemy that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

Art. 141.

It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any.

If nothing is stipulated the intercourse remains suspended, as during actual hostilities.

Art. 142.

An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

Art. 143.

When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject that the besieger must cease all extension, perfection, or advance of his attacking works as much so as from attacks by main force.

But as there is a difference of opinion among martial jurists, whether the besieged have the right to repair breaches or to erect new works of defense within the place during an armistice, this point should be determined by express agreement between the parties.



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Art. 144.

So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition, in his possession, during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in the same.

Art. 145.

When an armistice is clearly broken by one of the parties, the other party is released from all obligation to observe it.

Art. 146.

Prisoners taken in the act of breaking an armistice must be treated as prisoners of war, the officer alone being responsible who gives the order for such a violation of an armistice. The highest authority of the belligerent aggrieved may demand redress for the infraction of an armistice.

Art. 147.

Belligerents sometimes conclude an armistice while their plenipotentiaries are met to discuss the conditions of a treaty of peace; but plenipotentiaries may meet without a preliminary armistice; in the latter case, the war is carried on without any abatement.

SECTION IX

Assassination

Art. 148.

The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government, an outlaw, who may be slain without trial by any captor, any more than the modern law of peace allows such intentional outlawry; on the contrary, it abhors such outrage. The sternest retaliation should follow the murder committed in consequence of such proclamation, made by whatever authority. Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.

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SECTION X

Insurrection - Civil War - Rebellion

Art. 149.

Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.

Art. 150.

Civil war is war between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portions of the state are contiguous to those containing the seat of government.

Art. 151.

The term rebellion is applied to an insurrection of large extent, and is usually a war between the legitimate government of a country and portions of provinces of the same who seek to throw off their allegiance to it and set up a government of their own.

Art. 152.

When humanity induces the adoption of the rules of regular war to ward rebels, whether the adoption is partial or entire, it does in no way whatever imply a partial or complete acknowledgement of their government, if they have set up one, or of them, as an independent and sovereign power. Neutrals have no right to make the adoption of the rules of war by the assailed government toward rebels the ground of their own acknowledgment of the revolted people as an independent power.

Art. 153.

Treating captured rebels as prisoners of war, exchanging them, concluding of cartels, capitulations, or other warlike agreements with them; addressing officers of a rebel army by the rank they may have in the same; accepting flags of truce; or, on the other hand, proclaiming Martial Law in their territory, or levying war-taxes or forced loans, or doing any other act sanctioned or demanded by the law and usages of public war between sovereign belligerents, neither proves nor establishes an acknowledgment of the rebellious people, or of the government which they may have erected, as a public or sovereign power. Nor does the adoption of the rules



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of war toward rebels imply an engagement with them extending beyond the limits of these rules. It is victory in the field that ends the strife and settles the future relations between the contending parties.

Art. 154.

Treating, in the field, the rebellious enemy according to the law and usages of war has never prevented the legitimate government from trying the leaders of the rebellion or chief rebels for high treason, and from treating them accordingly, unless they are included in a general amnesty.

Art. 155.

All enemies in regular war are divided into two general classes - that is to say, into combatants and noncombatants, or unarmed citizens of the hostile government.

The military commander of the legitimate government, in a war of rebellion, distinguishes between the loyal citizen in the revolted portion of the country and the disloyal citizen. The disloyal citizens may further be classified into those citizens known to sympathize with the rebellion without positively aiding it, and those who, without taking up arms, give positive aid and comfort to the rebellious enemy without being bodily forced thereto.

Art. 156.

Common justice and plain expediency require that the military commander protect the manifestly loyal citizens, in revolted territories, against the hardships of the war as much as the common misfortune of all war admits.

The commander will throw the burden of the war, as much as lies within his power, on the disloyal citizens, of the revolted portion or province, subjecting them to a stricter police than the noncombatant enemies have to suffer in regular war; and if he deems it appropriate, or if his government demands of him that every citizen shall, by an oath of allegiance, or by some other manifest act, declare his fidelity to the legitimate government, he may expel, transfer, imprison, or fine the revolted citizens who refuse to pledge themselves anew as citizens obedient to the law and loyal to the government.

Whether it is expedient to do so, and whether reliance can be placed upon such oaths, the commander or his government have the right to decide.

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Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



General Orders No. 100 : The Lieber Code

Art. 157.

Armed or unarmed resistance by citizens of the United States against the lawful movements of their troops is levying war against the United States, and is therefore treason.

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Proof-of-Claim – B. 7 / 8

Criminal code.

35 Stat. 1088.

March 4, 1909.

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**Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder**



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

"Author."

his authority, and the word "author" shall include an employer in the case of works made for hire.

Repeal of conflict-
ing laws.
Pending cases not
affected.

SEC. 63. That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall affect causes of action for infringement of copyright heretofore committed now pending in courts of the United States, or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

In effect July 1, 1909.

SEC. 64. That this Act shall go into effect on the first day of July, nineteen hundred and nine.

Approved, March 4, 1909.

March 4, 1909.
[S. 2982.]

[Public, No. 350.]

Criminal Code.

CHAP. 321.—An Act To codify, revise, and amend the penal laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the penal laws of the United States be, and they hereby are, codified, revised, and amended, with title, chapters, headnotes, and sections, entitled, numbered, and to read as follows:

Crimes.

CRIMES.

CHAPTER ONE.

Offenses against the
existence of the Gov-
ernment.

OFFENSES AGAINST THE EXISTENCE OF THE GOVERNMENT.

Sec.

1. Treason.
2. Punishment of treason.
3. Misprision of treason.
4. Inciting or engaging in rebellion or
insurrection.
5. Criminal correspondence with foreign
governments.

Sec.

6. Seditious conspiracy.
7. Recruiting soldiers or sailors to serve
against the United States.
8. Enlistment to serve against the United
States.

Treason defined.
R. S., sec. 5331, p.
1036.

SEC. 1. Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.

Punishment for.
R. S., sec. 5332, p.
1036.

SEC. 2. Whoever is convicted of treason shall suffer death; or, at the discretion of the court, shall be imprisoned not less than five years and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real and personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States.

Misprision of trea-
son defined.
R. S., sec. 5333, p.
1036.

SEC. 3. Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be imprisoned not more than seven years and fined not more than one thousand dollars.

Punishment for.

SEC. 4. Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both; and shall, moreover, be incapable of holding any office under the United States.

Inciting, etc., rebel-
lion or insurrection.
R. S., sec. 5334, p.
1036.

Punishment for.

SEC. 5. Every citizen of the United States, whether actually resident or abiding within the same, or in any place subject to the

Criminal corre-
spondence with for-
eign governments.
R. S., sec. 5335, p.
1036.



jurisdiction thereof, or in any foreign country, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of or resident within the United States or in any place subject to the jurisdiction thereof, and not duly authorized, counsels, advises, or assists in any such correspondence with such intent, shall be fined not more than five thousand dollars and imprisoned not more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

SEC. 6. If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

SEC. 7. Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same, or opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States, shall be fined not more than one thousand dollars and imprisoned not more than five years.

SEC. 8. Every person enlisted or engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined one hundred dollars and imprisoned not more than three years.

CHAPTER TWO.

OFFENSES AGAINST NEUTRALITY.

- Sec.
9. Accepting a foreign commission.
 10. Enlisting in foreign service.
 11. Arming vessels against people at peace with the United States.
 12. Augmenting force of foreign vessel of war.
 13. Military expeditions against people at peace with the United States.

- Sec.
14. Enforcement of foregoing provisions.
 15. Compelling foreign vessels to depart.
 16. Armed vessels to give bond on clearance.
 17. Detention by collectors of customs.
 18. Construction of this chapter.

SEC. 9. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be fined not more than two thousand dollars and imprisoned not more than three years.

SEC. 10. Whoever, within the territory or jurisdiction of the United States, enlists, or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the

Punishment for.

Redress of private injuries.

Seditious conspiracy.
R. S., sec. 5335, p. 1037.

Punishment for.

Recruiting for service against United States.
R. S., sec. 5337, p. 1037.

Punishment for.

Enlisting to serve against United States.
R. S., sec. 5338, p. 1037.
Punishment for.

Offenses against neutrality.

Accepting foreign commission to serve against friendly power.
R. S., sec. 5281, p. 1024.

Punishment for.

Enlisting in foreign service.
R. S., sec. 5282, p. 1024.



Punishment for.

Arming vessels
against friendly
powers.
R. S., sec. 5283, p.
1024.

United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be fined not more than one thousand dollars and imprisoned not more than three years.

Punishment.
Forfeiture of vessel,
etc.

Augmenting force
of foreign armed ves-
sel.
R. S., sec. 5285, p.
1024.

SEC. 11. Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be fined not more than ten thousand dollars and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer and the other half to the use of the United States.

Punishment for.

Organizing military
expedition against
friendly power.
R. S., sec. 5286, p.
1025.

SEC. 12. Whoever, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than one thousand dollars and imprisoned not more than one year.

Punishment for.

Enforcement by
courts.
R. S., sec. 5287, p.
1025.

SEC. 13. Whoever, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be fined not more than three thousand dollars and imprisoned not more than three years.

Employment of land
or naval forces.

SEC. 14. The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this chapter; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that



purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to enforce the execution of the prohibitions and penalties of this chapter, and the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territory or jurisdiction of the United States against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

SEC. 15. It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States.

SEC. 16. The owners or consignees of every armed vessel sailing out of the ports of, or under the jurisdiction of, the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

SEC. 17. The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, or any place subject to the jurisdiction thereof, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section.

SEC. 18. The provisions of this chapter shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.

Compelling foreign vessels to depart.
R. S., sec. 5288, p. 1025.

Bond from armed vessels on clearing.
R. S., sec. 5289, p. 1025.

Detention by collectors of customs.
R. S., sec. 5290, p. 1025.

Construction of this chapter.
R. S., sec. 5291, p. 1025.
Transient aliens.

Prosecutions for treason or piracy not affected.



CHAPTER THREE.

Offenses against
elective franchise and
civil rights.

OFFENSES AGAINST THE ELECTIVE FRANCHISE AND CIVIL RIGHTS
OF CITIZENS.

Sec.

19. Conspiracy to injure, etc., persons in the exercise of civil rights.
20. Depriving citizens of civil rights under color of State laws.
21. Conspiring to prevent officer from performing duties.
22. Unlawful presence of troops at elections.

Sec.

23. Intimidation of voters by officers, etc., of Army or Navy.
24. Officers of Army or Navy prescribing qualifications of voters.
25. Officers, etc., of Army or Navy interfering with officers of election, etc.
26. Persons disqualified from holding office; when soldiers, etc., may vote.

Conspiring to injure, etc., persons in the exercise of civil rights.
R. S., sec. 5508, p. 1067.

Punishment for.

Depriving citizens of civil rights under color of State laws, etc.
R. S., sec. 5510, p. 1068.

Punishment for.

Conspiring to prevent officer from performing duties.
R. S., sec. 5518, p. 1070.

Punishment for.

Unlawful presence of troops at polls.
R. S., sec. 5528, p. 1071.

Punishment for.

Intimidating voters by Army or Navy officers, etc.
R. S., sec. 5529, p. 1071.

Punishment for.

Army or Navy officers prescribing qualifications of voters.
R. S., sec. 5530, p. 1072.

Interfering with election officers by Army or Navy officers, etc.

SEC. 19. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

SEC. 20. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

SEC. 21. If two or more persons in any State, Territory, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, District, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

SEC. 22. Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than five thousand dollars and imprisoned not more than five years.

SEC. 23. Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State shall be fined not more than five thousand dollars and imprisoned not more than five years.

SEC. 24. Every officer of the army or navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of voters at any election in any State shall be punished as provided in the preceding section.

SEC. 25. Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order,



or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section twenty-three.

Sec. 26. Every person convicted of any offense defined in the four preceding sections shall, in addition to the punishment therein prescribed, be disqualified from holding any office of honor, profit, or trust under the United States; but nothing therein shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

R. S., sec. 5531, p. 1072.

Additional punishment.
R. S., sec. 5532, p. 1072.

Suffrage by officers, etc., not impaired.

CHAPTER FOUR.

OFFENSES AGAINST THE OPERATIONS OF THE GOVERNMENT.

Offenses against operations of the Government.

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|---|--|
| <p>Sec.
27. Forgery of letters patent.
28. Forging bids, public records, etc.
29. Forging deeds, powers of attorney, etc.
30. Having forged papers in possession.
31. False acknowledgments.
32. Falsely pretending to be United States officer.
33. False personation of holder of public stock.
34. False demand on fraudulent power of attorney.
35. Making or presenting false claims.
36. Embezzling arms, stores, etc.
37. Conspiracy to commit offense against the United States; all parties liable for acts of one.
38. Delaying or defrauding captor or claimant, etc., of prize property.
39. Bribery of United States officer.
40. Unlawfully taking or using papers relating to claims.
41. Persons interested not to act as agents of the Government.
42. Enticing desertions from the military or naval service.
43. Enticing away workmen.
44. Injuries to fortifications, harbor defenses, etc.
45. Unlawfully entering upon military reservation, fort, etc.
46. Robbery or larceny of personal property of the United States.
47. Embezzling, stealing, etc., public property.
48. Receivers, etc., of stolen public property.
49. Timber depredations on public lands.
50. Timber, etc., depredations on Indian and other reservations.
51. Boxing, etc., timber on public lands for turpentine, etc.
52. Setting fire to timber on public lands.
53. Failing to extinguish fires.
54. Fines to be paid into school fund.
55. Trespassing on Bull Run National Forest, Oregon.
56. Breaking fence or gate inclosing reserved lands, or driving or permitting live stock to enter upon.
57. Injuring or removing posts or monuments.</p> | <p>Sec.
58. Interrupting surveys.
59. Agreement to prevent bids at sale of lands.
60. Injuries to United States telegraph, etc., lines.
61. Counterfeiting weather forecast.
62. Interfering with employees of Bureau of Animal Industry.
63. Forgery of certificate of entry.
64. Concealment or destruction of invoices, etc.
65. Resisting revenue officer; rescuing or destroying seized property, etc.
66. Falsely assuming to be a revenue officer.
67. Offering presents to revenue officer.
68. Admitting merchandise to entry for less than legal duty.
69. Securing entry of merchandise by false samples, etc.
70. False certification by consular officer.
71. Taking seized property from custody of revenue officer.
72. Forging or altering ship's papers or custom-house documents.
73. Forging military bounty-land warrant, etc.
74. Forging, etc., certificate of citizenship.
75. Engraving, etc., plate for printing, or photographing, selling, or bringing into United States, etc., certificate of citizenship.
76. False personation, etc., in procuring naturalization.
77. Using false certificate of citizenship, or denying citizenship, etc.
78. Using false certificate, etc., as evidence of right to vote, etc.
79. Falsely claiming citizenship.
80. Taking false oath in naturalization proceedings.
81. Provisions applicable to all courts of naturalization.
82. Shanghaing and falsely inducing person intoxicated to go on vessel prohibited.
83. Corporations, etc., not to contribute money for political elections, etc.
84. Hunting birds, or taking their eggs from breeding grounds, prohibited.</p> |
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Forging, etc., letters
patent.
R. S., sec. 5416, p.
1049.

Punishment for.

Forging bonds, blds,
public records, etc.
R. S., secs. 5418,
5479, pp. 1050, 1062.

Transmitting forged,
etc., papers.

Punishment for.

Forging deeds,
powers of attorney,
etc.
R. S., sec. 5421, p.
1050.

Transmitting forged,
etc., papers.

Punishment for.

Having false, etc.,
papers in possession.
R. S., sec. 5422, p.
1051.

Punishment for.

Officer making false
acknowledgments.

SEC. 27. Whoever shall falsely make, forge, counterfeit, or alter any letters patent granted or purporting to have been granted by the President of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish as genuine, any such forged, counterfeited, or falsely altered letters patent, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

SEC. 28. Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid, or assist in the false making, altering, forging, or counterfeiting, any bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or shall utter or publish as true, or cause to be uttered or published as true, or have in his possession with the intent to utter or publish as true, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, knowing the same to be false, forged, altered, or counterfeited; or shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, the office of any officer of the United States, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be fined not more than one thousand dollars, or imprisoned not more than ten years, or both.

SEC. 29. Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum of money; or whoever shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, or whoever shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the Government of the United States, any deed, power of attorney, order, certificate, receipt, contract, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be fined not more than one thousand dollars and imprisoned not more than ten years.

SEC. 30. Whoever, knowingly and with intent to defraud the United States, shall have in his possession any false, altered, forged, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of enabling another to obtain from the United States, or from any officer or agent thereof, any sum of money, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both.

SEC. 31. Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, shall knowingly make any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter, submitted to, made with, or taken on behalf of, the



United States, and concerning which an oath or affirmation is required by law or regulation made in pursuance of law, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

SEC. 32. Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any Department, or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any Department, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

SEC. 33. Whoever shall falsely personate any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, prize money, wages, or other debt due from the United States, and, under color of such false personation, shall transfer or endeavor to transfer such public stock or any part thereof, or shall receive or endeavor to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, prize money, wages, or other debt, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

SEC. 34. Whoever shall knowingly or fraudulently demand or endeavor to obtain any share or sum in the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or conveyed, or to have any annuity, dividend, pension, prize money, wages, or other debt due from the United States, or any part thereof, received, or paid by virtue of any false, forged, or counterfeited power of attorney, authority, or instrument, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

SEC. 35. Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; or whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States or willfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. And who-

Punishment for.

Falsely pretending to be United States officer.
R. S., sec. 5438, p. 1056.
Vol. 23, p. 11.

Punishment for.

False personation of holder of public stocks, pensioner, etc.
R. S. 5436, p. 1053.

Punishment for.

False demand on fraudulent power of attorney.
R. S., sec. 5436, p. 1054.

Punishment for.

Presenting false claims.
Public Laws. 1st sess., p. 555.
R. S., sec. 5438, p. 1054.

Punishment for.

Unlawful purchase of public property.



Punishment for. ever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes, military stores, or other public property, whether furnished to the soldier, sailor, officer, or person, under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be fined not more than five hundred dollars, and imprisoned not more than two years.

Embezzling arms, stores, etc.
R. S., sec. 5439, p. 1055.

SEC. 36. Whoever shall steal, embezzle, or knowingly apply to his own use, or unlawfully sell, convey, or dispose of, any ordnance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in the preceding section.

Conspiring to commit offense against United States.
R. S., sec. 5440, p. 1055.
Vol. 21, p. 4.
Punishment for all parties.

SEC. 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

Fraudulent interference with delivery, etc., of prize property.
R. S., sec. 5441, p. 1055.

SEC. 38. Whoever shall willfully do, or aid or advise in the doing, of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any captor or claimant of such property, shall be fined not more than ten thousand dollars, or imprisoned not more than five years, or both.

Punishment for.
Bribery of United States officer.
R. S., sec. 5451, p. 1056.

SEC. 39. Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years.

Punishment for.

Unlawfully taking or using papers relating to claims.
R. S., sec. 5454, p. 1057.

SEC. 40. Whoever shall take and carry away, without authority from the United States, from the place where it has been filed, lodged, or deposited, or where it may for the time being actually be kept by authority of the United States, any certificate, affidavit, deposition, written statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper, prepared, fitted, or intended to be used or presented in order to procure the payment of money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim,



account, or demand, or any part thereof, has or has not already been allowed or paid; or whoever shall present, use, or attempt to use, any such document, record, file, or paper so taken and carried away, in order to procure the payment of any money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 41. No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than two thousand dollars and imprisoned not more than two years.

SEC. 42. Whoever shall entice or procure, or attempt or endeavor to entice or procure, any soldier in the military service, or any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or shall aid any such soldier, seaman, or other person in deserting or in attempting to desert from such service; or whoever shall harbor, conceal, protect, or assist any such soldier, seaman, or other person who may have deserted from such service, knowing him to have deserted therefrom, or shall refuse to give up and deliver such soldier, seaman, or other person on the demand of any officer authorized to receive him, shall be imprisoned not more than three years and fined not more than two thousand dollars.

SEC. 43. Whoever shall procure or entice any artificer or workman retained or employed in any arsenal or armory, to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States; or whoever, after due notice of the engagement of such workman or artificer, during the continuance of such engagement, shall retain, hire, or in anywise employ, harbor, or conceal such artificer or workman, shall be fined not more than fifty dollars, or imprisoned not more than three months, or both.

SEC. 44. Whoever shall willfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo, or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

SEC. 45. Whoever shall go upon any military reservation, army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

SEC. 46. Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 47. Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Punishment for

Persons interested not to act as government agents.
R. S., sec. 1783, p. 316.

Punishment for.

Enticing desertion from Army or Navy.
R. S., sec. 1553, 5455.
pp. 294, 1057.

Enticing workmen from arsenals or armories.
R. S., sec. 1868, p. 291.

Punishment for.

Injuries to fortifications, etc.
Vol. 30, p. 717.

Punishment for.

Unlawfully entering fort, etc.

Punishment for.

Robbery of personal property of United States.
R. S., sec. 5456, p. 1058.
Punishment for.

Embezzling public moneys, etc.
Vol. 18, p. 479.
Punishment for.



Receiving, etc.,
stolen public prop-
erty.
Vol. 18, p. 479.

Punishment for.

Timber depre-
dations on public lands.

Punishment for.
Rights of entrymen.

Timber, etc., depre-
dations on reserva-
tions or Indian lands.
R. S., sec. 5388, p.
1044.
Vol. 25, p. 166.

Punishment for.

Boxing, etc., trees
for turpentine.
Vol. 34, p. 208.

Punishment for.

Setting fire to tim-
ber on public lands.
Vol. 31, p. 169.

Punishment for.

Failing to extin-
guish fires.
Vol. 31, p. 170.

Punishment for.

SEC. 48. Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender.

SEC. 49. Whoever shall cut, or cause or procure to be cut, or shall wantonly destroy, or cause to be wantonly destroyed, any timber growing on the public lands of the United States; or whoever shall remove, or cause to be removed, any timber from said public lands, with intent to export or to dispose of the same; or whoever, being the owner, master, or consignee of any vessel, or the owner, director, or agent of any railroad, shall knowingly transport any timber so cut or removed from said lands, or lumber manufactured therefrom, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Nothing in this section shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States. And nothing in this section shall interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.

SEC. 50. Whoever shall unlawfully cut, or aid in unlawfully cutting, or shall wantonly injure or destroy, or procure to be wantonly injured or destroyed, any tree, growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

SEC. 51. Whoever shall cut, chip, chop, or box any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance, or shall knowingly encourage, cause, procure, or aid in the cutting, chipping, chopping, or boxing of any such tree, or shall buy, trade for, or in any manner acquire any pitch, turpentine, or other substance, or any article or commodity made from any such pitch, turpentine, or other substance, when he has knowledge that the same has been so unlawfully obtained from such trees, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

SEC. 52. Whoever shall willfully set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SEC. 53. Whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain shall, before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.



SEC. 54. In all cases arising under the two preceding sections the fines collected shall be paid into the public school fund of the county in which the lands where the offense was committed are situated.

Fines to be paid into school funds.
Vol. 31, p. 170.

SEC. 55. Whoever, except forest rangers and other persons employed by the United States to protect the forest, federal, and state officers in the discharge of their duties, and the employees of the water board of the city of Portland, State of Oregon, shall knowingly trespass upon any part of the reserve known as Bull Run National Forest, in the Cascade Mountains, in the State of Oregon, or shall enter thereon for the purpose of grazing stock, or shall engage in grazing stock thereon, or shall permit stock of any kind to graze thereon, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Trespassing on Bull Run National Forest, Oreg.
Vol. 33, p. 524.

SEC. 56. Whoever shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States which, in pursuance of any law, have been reserved or purchased by the United States for any public use; or whoever shall drive any cattle, horses, hogs, or other live stock upon any such lands for the purpose of destroying the grass or trees on said lands, or where they may destroy the said grass or trees; or whoever shall knowingly permit his cattle, horses, hogs, or other live stock, to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs, or other live stock may or can destroy the grass or trees or other property of the United States on the said lands, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both: *Provided*, That nothing in this section shall be construed to apply to unreserved public lands.

Punishment for.

Breaking fences, driving cattle, etc., on inclosed public lands.
Vol. 18, p. 481.

SEC. 57. Whoever shall willfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall willfully cut down any witness tree or any tree blazed to mark the line of a Government survey, or shall willfully deface, change, or remove any monument or bench mark of any Government survey, shall be fined not more than two hundred and fifty dollars, or imprisoned not more than six months, or both.

Punishment for.

Proviso.
Lands excepted.

Injuring or removing survey marks.
Vol. 29, p. 343.

SEC. 58. Whoever in any manner, by threats or force, shall interrupt, hinder, or prevent the surveying of the public lands, or of any private land claim which has been or may be confirmed by the United States, by the persons authorized to survey the same, in conformity with the instructions of the Commissioner of the General Land Office, shall be fined not more than three thousand dollars and imprisoned not more than three years.

Punishment for.

Interrupting surveys.
R. S., sec. 2412, p. 442.

SEC. 59. Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

Punishment for.

Agreements to prevent bids at land sales.
R. S., sec. 2373, p. 434.

SEC. 60. Whoever shall willfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line, or system, operated or controlled by the United States, whether constructed or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line, or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line, or system, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

Punishment for.

Injuries to United States telegraph, etc., lines.
Vol. 18, p. 250.

Punishment for.



Counterfeiting
weather forecasts.
Vol. 33, p. 864.

Punishment for.

Molesting Animal-
Industry employees.
Vol. 33, p. 1265.

Punishment for.

Using deadly
weapon.

Punishment for.

Forging customs
entry certificates.
R. S., sec. 5417, p.
1050.

Punishment for.

Concealing or de-
stroying invoices, etc.
R. S., sec. 5443, p.
1055.

Punishment for.

Resisting revenue
officers, rescuing or
destroying seized
property, etc.
R. S., sec. 5447, p.
1055.

Punishment for.

Using deadly
weapon.

Punishment for.

Falsely assuming to
be a revenue officer.
R. S., sec. 5418, p.
1056.

Punishment for.

Offering presents to
customs officer.
R. S., sec. 5452, p.
1056.

SEC. 61. Whoever shall knowingly issue or publish any counterfeit weather forecast or warning of weather conditions falsely representing such forecast or warning to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the Government service, shall be fined not more than five hundred dollars, or imprisoned not more than ninety days, or both.

SEC. 62. Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 63. Whoever shall forge, counterfeit, or falsely alter any certificate of entry made or required to be made in pursuance of law by any officer of the customs, or shall use any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than ten thousand dollars and imprisoned not more than three years.

SEC. 64. Whoever shall willfully conceal or destroy any invoice, book, or paper relating to any merchandise liable to duty, which has been or may be imported into the United States from any foreign port or country, after an inspection thereof has been demanded by the collector of any collection district, or shall at any time conceal or destroy any such invoice, book, or paper for the purpose of suppressing any evidence of fraud therein contained, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SEC. 65. Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer of the customs or of the internal revenue, or his deputy, or any person assisting him in the execution of his duties, or any person authorized to make searches and seizures, in the execution of his duty, or shall rescue, attempt to rescue, or cause to be rescued, any property which has been seized by any person so authorized; or whoever before, at, or after such seizure, in order to prevent the seizure or securing of any goods, wares, or merchandise by any person so authorized, shall stave, break, throw overboard, destroy, or remove the same, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any person authorized to make searches or seizures, in the execution of his duty, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duty, shall be imprisoned not more than ten years.

SEC. 66. Whoever shall falsely represent himself to be a revenue officer, and, in such assumed character, demand or receive any money or other article of value from any person for any duty or tax due to the United States, or for any violation or pretended violation of any revenue law of the United States, shall be fined not more than five hundred dollars and imprisoned not more than two years.

SEC. 67. Whoever, being engaged in the importation into the United States of any goods, wares, or merchandise, or being interested as principal, clerk, or agent in the entry of any goods, wares, or merchandise, shall at any time make, or offer to make, to any officer of the revenue, any gratuity or present of money or other thing of



value, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SEC. 68. Whoever, being an officer of the revenue, shall, by any means whatever, knowingly admit or aid in admitting to entry, any goods, wares, or merchandise, upon payment of less than the amount of duty legally due thereon, shall be removed from office and fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SEC. 69. Whoever, by any means whatever, shall knowingly effect, or aid in effecting, any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification thereof as to quality or value, or by the payment of less than the amount of duty legally due thereon, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SEC. 70. Whoever, being a consul, or vice-consul, or other person employed in the consular service of the United States, shall knowingly certify falsely to any invoice, or other paper, to which his certificate is by law authorized or required, shall be fined not more than ten thousand dollars and imprisoned not more than three years.

SEC. 71. Whoever shall dispossess or rescue, or attempt to dispossess or rescue, any property taken or detained by any officer or other person under the authority of any revenue law of the United States, or shall aid or assist therein, shall be fined not more than three hundred dollars and imprisoned not more than one year.

SEC. 72. Whoever shall falsely make, forge, counterfeit, or alter any instrument in imitation of, or purporting to be, an abstract or official copy or certificate of the recording, registry, or enrollment of any vessel, in the office of any collector of the customs, or a license to any vessel for carrying on the coasting trade or fisheries of the United States, or a certificate of ownership, pass, passport, sea letter, or clearance, granted for any vessel, under the authority of the United States, or a permit, debenture, or other official document granted by any collector or other officer of the customs by virtue of his office; or whoever shall utter, publish, or pass, or attempt to utter, publish, or pass, as true, any such false, forged, counterfeited, or falsely altered instrument, abstract, official copy, certificate, license, pass, passport, sea letter, clearance, permit, debenture, or other official document herein specified, knowing the same to be false, forged, counterfeited, or falsely altered, with an intent to defraud, shall be fined not more than one thousand dollars and imprisoned not more than three years.

SEC. 73. Whoever shall falsely make, alter, forge, or counterfeit any military bounty-land warrant, or military bounty-land warrant certificate, issued or purporting to have been issued by the Commissioner of Pensions under any law of Congress, or any certificate or duplicate certificate of location of any military bounty-land warrant, or military bounty-land warrant certificate upon any of the lands of the United States, or any certificate or duplicate certificate of the purchase of any of the lands of the United States, or any receipt or duplicate receipt for the purchase money of any of the lands of the United States, issued or purporting to have been issued by the register and receiver at any land office of the United States or by either of them; or whoever shall utter, publish, or pass as true, any such false, forged, or counterfeited military bounty-land warrant, military bounty-land warrant certificate, certificate or duplicate certificate of location, certificate or duplicate certificate of purchase, receipt or duplicate receipt for the purchase money of any of the lands of the United States, knowing the same to be false, forged, or counterfeited, shall be imprisoned not more than ten years.

Punishment for.

Admitting entries for less than legal duties.

R. S., sec. 5444, p. 1055.

Punishment for.

Securing false entry of goods.

R. S., sec. 5445, p. 1055.

Punishment for.

False certification by consular officer.

R. S., sec. 5442, p. 1055.

Punishment for.

Taking seized property from revenue officer.

R. S., sec. 5446, p. 1055.

Punishment for.

Forging or altering ship's or custom-house papers.

R. S., sec. 5423, p. 1051.

Punishment for.

Forging, etc., military bounty-land warrants, etc.

R. S., sec. 5420, p. 1050.

Punishment for.



Forging, etc., certificates of citizenship.
Vol. 34, p. 602.

Punishment for.

Engraving, etc., counterfeit plates for citizenship certificates.
Vol. 34, p. 602.

Printing, etc.

Distinctive paper.

Punishment for.

False personation, etc., in procuring naturalization.
R. S., sec. 5424, p. 1051.

Punishment for.

Using false certificate of citizenship.
R. S., sec. 5425, p. 1051.

Citizenship blanks.
Vol. 34, p. 602.
Denying citizenship.

SEC. 74. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall knowingly aid or assist in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

SEC. 75. Whoever shall engrave, or cause or procure to be engraved, or assist in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship; or whoever shall sell any such plate, or shall bring into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor or other proper officer; or whoever shall have in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use or to suffer such plate to be used in forging or counterfeiting any such certificate or any part thereof; or whoever shall print, photograph, or in any manner cause to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof; or whoever shall sell any such certificate, or shall bring the same into the United States from any foreign place, except by direction of some proper officer of the United States; or whoever shall have in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent unlawfully to use the same, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

SEC. 76. Whoever, when applying to be admitted a citizen, or when appearing as a witness for any such person, shall knowingly personate any person other than himself, or shall falsely appear in the name of a deceased person, or in an assumed or fictitious name; or whoever shall falsely make, forge, or counterfeit any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or whoever shall utter, sell, dispose of, or shall use as true or genuine, for any unlawful purpose, any false, forged, antedated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or whoever shall sell or dispose of to any person other than the person for whom it was originally issued any certificate of citizenship or certificate showing any person to be admitted a citizen, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 77. Whoever shall use or attempt to use, or shall aid, assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, counterfeit, or antedated, or knowing the same to have been procured by fraud or otherwise unlawfully obtained; or whoever, without lawful excuse, shall knowingly possess any false, forged, antedated, or counterfeit certificate of citizenship purporting to have been issued under any law of the United States relating to naturalization, knowing such certificate to be false, forged, antedated, or counterfeit, with the intent unlawfully to use the same; or whoever shall obtain, accept, or receive any certificate of citizenship, knowing the same to have been procured by fraud or by the use or means of any false name or statement given or made with the intent to procure, or to aid in procuring, the issuance of such certificate, or knowing the same to have been fraudulently altered or antedated; or whoever, without lawful excuse, shall have in his possession any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization with the intent unlawfully to use the same; or



whoever, after having been admitted to be a citizen, shall, on oath or by affidavit, knowingly deny that he has been so admitted, with the intent to evade or avoid any duty or liability imposed or required by law, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 78. Whoever shall in any manner use, for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order, certificate, judgment, or exemplification has been unlawfully issued or made; or whoever shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 79. Whoever shall knowingly use any certificate of naturalization heretofore or which hereafter may be granted by any court, which has been or may be procured through fraud or by false evidence, or which has been or may hereafter be issued by the clerk or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; or whoever, for any fraudulent purpose whatever, shall falsely represent himself to be a citizen of the United States without having been duly admitted to citizenship, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

SEC. 80. Whoever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken, shall be fined not more than one thousand dollars and imprisoned not more than five years.

SEC. 81. The provisions of the five sections last preceding shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced, and whether such court was vested by law with jurisdiction in naturalization proceedings or not.

SEC. 82. Whoever, with intent that any person shall perform service or labor of any kind on board of any vessel engaged in trade and commerce among the several States or with foreign nations, or on board of any vessel of the United States engaged in navigating the high seas or any navigable water of the United States, shall procure or induce, or attempt to procure or induce, another, by force or threats or by representations which he knows or believes to be untrue, or while the person so procured or induced is intoxicated or under the influence of any drug, to go on board of any such vessel, or to sign or in anywise enter into any agreement to go on board of any such vessel to perform service or labor thereon; or whoever shall knowingly detain on board of any such vessel any person so procured or induced to go on board thereof, or to enter into any agreement to go on board thereof, by any means herein defined; or whoever shall knowingly aid or abet in the doing of any of the things herein made unlawful, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

SEC. 83. It shall be unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in

Punishment for.

Attempting to vote, etc., on false certificate. R. S., sec. 6425, p. 1052.

Punishment for.

Falsely claiming citizenship. R. S., sec. 5423, p. 1052.

Punishment for.

Falsely swearing in naturalization cases. R. S., sec. 5395, p. 1046.

Punishment for.

Provisions applicable to all courts of naturalization. R. S., sec. 5429, p. 1052.

Shanghaiing of sailors, described. Vol. 34, p. 651.

Punishment for.

Corporations contributing for political elections. Vol. 34, p. 864.



Penalty for. Congress is to be voted for, or any election by any State legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be fined not more than five thousand dollars; and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

Additional to officers.

Hunting, taking eggs, etc., on bird-breeding grounds. Vol. 34, p. 536.

Punishment for. SEC. 84. Whoever shall hunt, trap, capture, willfully disturb, or kill any bird of any kind whatever, or take the eggs of any such bird, on any lands of the United States which have been set apart or reserved as breeding grounds for birds, by any law, proclamation, or executive order, except under such rules and regulations as the Secretary of Agriculture may, from time to time, prescribe, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

CHAPTER FIVE.

Offenses relating to official duties.

OFFENSES RELATING TO OFFICIAL DUTIES.

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| <p>Sec.</p> <p>85. Officer, etc., of the United States guilty of extortion.</p> <p>86. Receipting for larger sums than are paid.</p> <p>87. Disbursing officer unlawfully converting, etc., public money.</p> <p>88. Failure of Treasurer, etc., to safely keep public money.</p> <p>89. Custodian of public money failing to safely keep, etc.</p> <p>90. Failure of officer to render accounts, etc.</p> <p>91. Failure to deposit as required.</p> <p>92. Provisions of the five preceding sections, to whom applicable.</p> <p>93. Record evidence of embezzlement.</p> <p>94. Prima facie evidence.</p> <p>95. Evidence of conversion.</p> <p>96. Banker, etc., receiving deposit from disbursing officer.</p> <p>97. Embezzlement by internal-revenue officer, etc.</p> <p>98. Officer contracting beyond specific appropriation.</p> <p>99. Officer of United States court failing to deposit moneys, etc.</p> <p>100. Receiving loan or deposit from officer of court.</p> <p>101. Failure to make returns or reports.</p> <p>102. Aiding in trading in obscene literature.</p> <p>103. Collecting and disbursing officers forbidden to trade in public property.</p> <p>104. Certain officers forbidden to purchase, etc., witness, etc., fees.</p> <p>105. Falsely certifying, etc., as to record of deeds, etc.</p> <p>106. Other false certificates.</p> | <p>Sec.</p> <p>107. Inspector of steamboats receiving illegal fees.</p> <p>108. Pension agent taking fee, etc.</p> <p>109. Officer not to be interested in claims against the United States.</p> <p>110. Member of Congress, etc., soliciting or accepting bribe, etc.</p> <p>111. Offering, etc., Member of Congress bribe, etc.</p> <p>112. Member of Congress taking consideration for procuring contract, office, etc.; offering Member consideration, etc.</p> <p>113. Member of Congress, etc., taking compensation in matters to which United States is a party.</p> <p>114. Member of Congress not to be interested in contract.</p> <p>115. Officer making contracts with Member of Congress.</p> <p>116. Contracts to which two preceding sections do not apply.</p> <p>117. United States officer accepting bribe.</p> <p>118. Political contributions not to be solicited by certain officers.</p> <p>119. Political contributions not to be received in public offices.</p> <p>120. Immunity from official proscription.</p> <p>121. Giving money to officials for political purposes prohibited.</p> <p>122. Penalty for violating provisions of four preceding sections.</p> <p>123. Governmental officer, etc., giving out advance information respecting crop reports.</p> <p>124. Government officer, etc., knowingly compiling or issuing false statistics respecting crops.</p> |
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Extortion by officials. Vol. 34, p. 546. R. S., sec. 5491, p. 1063.

Punishment for.

SEC. 85. Every officer, clerk, agent, or employee of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent, or employee, who, under color of his office, clerkship, agency, or employment, or under color of his pretended or assumed office, clerkship, agency, or employment, is guilty of extortion, and every person who shall attempt any act which if performed would make him guilty of extortion, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.



SEC. 86. Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by Congress, shall pay to any clerk or other employee of the United States a sum less than that provided by law, and require such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employee of the Government and imprisoned not more than two years.

Receipting for larger sums than are paid.
R. S., sec. 5483, p. 1063.

Punishment for.

SEC. 87. Whoever, being a disbursing officer of the United States, or a person acting as such, shall in any manner convert to his own use, or loan with or without interest, or deposit in any place or in any manner, except as authorized by law, any public money intrusted to him; or shall, for any purpose not prescribed by law, withdraw from the Treasurer or any assistant treasurer, or any authorized depository, or transfer, or apply, any portion of the public money intrusted to him, shall be deemed guilty of an embezzlement of the money so converted, loaned, deposited, withdrawn, transferred, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both.

Disbursing officers unlawfully using, etc., public money.
R. S., sec. 5488, p. 1064.

Punishment for.

SEC. 88. If the Treasurer of the United States or any assistant treasurer, or any public depository, fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having money of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years.

Failure of depositories to safely keep public deposits.
R. S., sec. 5489, p. 1064.

Punishment for.

SEC. 89. Every officer or other person charged by any Act of Congress with the safe-keeping of the public moneys, who shall loan, use, or convert to his own use, or shall deposit in any bank or exchange for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years.

Custodian failing to keep, etc., public moneys.
R. S., sec. 5490, p. 1064.

Punishment for.

SEC. 90. Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law shall be deemed guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled and imprisoned not more than ten years.

Failure of officer to render accounts.
R. S., sec. 5491, p. 1065.

Punishment for.

SEC. 91. Whoever, having money of the United States in his possession or under his control, shall fail to deposit it with the Treasurer, or some assistant treasurer, or some public depository of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be fined in a sum equal to the amount of money embezzled and imprisoned not more than ten years.

Failure to deposit as required.
R. S., sec. 5492, p. 1065.

Punishment for.

SEC. 92. The provisions of the five preceding sections shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositories of the same.

Persons affected.

SEC. 93. Upon the trial of any indictment against any person for embezzling public money under any provision of the six preceding sections, it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money.

Record evidence of embezzlement.
R. S., sec. 5494, p. 1065.



Prima facie evidence.
R. S., sec. 5495, p. 1065.

SEC. 94. The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, prima facie evidence of such embezzlement.

Evidence of conversion.
R. S., sec. 5496, p. 1065.

SEC. 95. If any officer charged with the disbursement of the public moneys accepts, receives, or transmits to the Treasury Department to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion by such officer to his own use of the amount specified in such receipt or voucher.

Banker, etc., receiving unauthorized deposit of public money.
R. S., sec. 5497, p. 1065.

SEC. 96. Every banker, broker, or other person not an authorized depository of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both.

Punishment for.

Embezzlement by internal-revenue officer.
Vol. 20, p. 280.

SEC. 97. Any officer connected with, or employed in, the Internal Revenue Service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both.

Punishment for.

Officer contracting beyond specific appropriation.
R. S., sec. 5503, p. 1065.

SEC. 98. Whoever, being an officer of the United States, shall knowingly contract for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be fined not more than two thousand dollars and imprisoned not more than two years.

Court officers failing to deposit money, etc.
R. S., sec. 5504, p. 1066.

SEC. 99. Whoever, being a clerk or other officer of a court of the United States, shall fail forthwith to deposit any money belonging in the registry of the court, or hereafter paid into court or received by the officers thereof, with the Treasurer, assistant treasurer, or a designated depository of the United States, in the name and to the credit of such court, or shall retain or convert to his own use or to the use of another any such money, is guilty of embezzlement, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both; but nothing herein shall be held to

Punishment for.

Delivery upon security.



prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court.

SEC. 100. Whoever shall knowingly receive, from a clerk or other officer of a court of the United States, as a deposit, loan, or otherwise, any money belonging in the registry of such court, is guilty of embezzlement, and shall be punished as prescribed in the preceding section.

SEC. 101. Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any Act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such Act or regulation, shall be fined not more than one thousand dollars.

SEC. 102. Whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in violating any provision of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail, obscene or indecent publications, or representations, or means for preventing conception or producing abortion, or other article of indecent or immoral use or tendency, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 103. Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, shall carry on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both, and be removed from office, and thereafter be incapable of holding any office under the United States.

SEC. 104. Whoever, being a judge, clerk, or deputy clerk of any court of the United States, or of any territory thereof, or a United States district attorney, assistant attorney, marshal, deputy marshal, commissioner, or other person holding any office or employment, or position of trust or profit under the Government of the United States shall, either directly or indirectly, purchase at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal, or any other officer of the court whatsoever, shall be fined not more than one thousand dollars.

SEC. 105. Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, shall knowingly certify falsely that such conveyance or instrument has or has not been recorded, shall be fined not more than one thousand dollars, or imprisoned not more than seven years, or both.

SEC. 106. Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

SEC. 107. Every inspector of steamboats who, upon any pretense, receives any fee or reward for his services, except what is allowed to him by law, shall forfeit his office, and be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

SEC. 108. Every pension agent, or other person employed or appointed by him, who takes, receives, or demands any fee or reward from any pensioner for any service in connection with the payment of his pension, shall be fined not more than five hundred dollars.

SEC. 109. Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of

Receiving loan, etc., from court officer.
R. S., sec. 5505, p. 1067.

Punishment for.
Failure to make returns or reports.
R. S., sec. 1780, p. 316.

Punishment for.
Aiding in obscene literature trade, etc.
Vol. 20, p. 293.
R. S., sec. 1785, p. 317.

Punishment for.
Trading in public property by collecting or disbursing officer.
R. S., secs. 1788, 1789, p. 317.

Punishment for.

Court officials purchasing fees at less than face value.
Vol. 29, p. 593.

Punishment for.

Falsely certifying as to record of deeds.

Punishment.

Other false certificates.

Punishment.

Steamboat inspectors taking illegal fees.
R. S., sec. 5482, p. 1063.
Punishment for.

Pension agents taking fee.
R. S., sec. 5487, p. 1064.

Punishment for.

Officers interested in claims against United States.
R. S., sec. 5493, p. 1065.



the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

Punishment for.

Accepting, etc.,
bribe by Member of
Congress.
R. S., secs. 1781,
5450, 5502, pp. 316,
1055, 1066.

SEC. 110. Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, directly or indirectly, ask, accept, receive, or agree to receive, any money, property, or other valuable consideration, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to him or to any person with his consent, connivance, or concurrence, for his attention to, or services, or with the intent to have his action, vote, or decision influenced, on any question, matter, cause, or proceeding, which may at any time be pending in either House of Congress or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity, or in his place as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place, and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States.

Punishment for.

Offering, etc., bribe
to Member of Con-
gress.
R. S., sec. 5450, p.
1056.

SEC. 111. Whoever shall promise, offer, or give, or cause to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value, to any Member of either House of Congress, or Delegate to Congress, or Resident Commissioner, after his election or appointment and either before or after he has qualified, and during his continuance in office, or to any person with his consent, connivance, or concurrence, with intent to influence his action, vote, or decision, on any question, matter, cause, or proceeding which may at any time be pending in either House of Congress, or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity or in his place as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount of money or value of the thing so promised, offered, given, made, or tendered, and imprisoned not more than three years.

Punishment for.

Member of Congress
taking consideration
for procuring con-
tract, etc.
R. S., sec. 1781, p.
316.

SEC. 112. Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being an officer or agent of the United States, shall directly or indirectly take, receive, or agree to receive, from any person, any money, property, or other valuable consideration whatever, for procuring, or aiding to procure, any contract, appointive office, or place, from the United States or from any officer or department thereof, for any person whatever, or for giving any such contract, appointive office, or place to any person whomsoever; or whoever, directly or indirectly, shall offer, or agree to give, or shall give, or bestow, any money, property, or other valuable consideration whatever, for the procuring, or aiding to procure,

Offering Member of
Congress considera-
tion to procure con-
tract, etc.



any such contract, appointive office, or place, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States. Any such contract or agreement may, at the option of the President, be declared void.

SEC. 113. Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.

SEC. 114. Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement, made or entered into in behalf of the United States by any officer or person authorized to make contracts on its behalf, shall be fined not more than three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States, in consideration of any such contract or agreement, it shall forthwith be repaid; and in case of failure or refusal to repay the same when demanded by the proper officer of the department under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties, for the recovery of the money so advanced.

SEC. 115. Whoever, being an officer of the United States, shall on behalf of the United States, directly or indirectly make or enter into any contract, bargain, or agreement, in writing or otherwise, with any Member of or Delegate to Congress, or any Resident Commissioner, after his election or appointment as such Member, Delegate, or Resident Commissioner, and either before or after he has qualified, and during his continuance in office, shall be fined not more than three thousand dollars.

SEC. 116. Nothing contained in the two preceding sections shall extend, or be construed to extend, to any contract or agreement made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any Member of or Delegate to Congress, or Resident Commissioner, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement.

SEC. 117. Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or

Punishment for.

Contracts voidable.

Receiving pay by Senator or Member of Congress in matters affecting United States.
R. S., sec. 1782, p. 316.

Punishment for.

Member of Congress interested in public contracts.
R. S., sec. 3739, p. 737.

Punishment for.

Contracts void.
Repayment, etc.

Making official contract with Member of Congress.
R. S., sec. 3742, p. 737.

Punishment for.

Contracts not affected.
R. S., sec. 3740, p. 737.

Official accepting bribe.
R. S., secs. 5501, 5502, p. 1066.

Punishment for.

Political contribu-
tions not to be solic-
ited by officers named.
Vol. 22, p. 406.

Political contribu-
tions not to be re-
ceived in public
offices.
Vol. 22, p. 407.

Immunity from offi-
cial proscription.
Vol. 22, p. 407.

Making political
contributions to offi-
cials.
Vol. 22, p. 407.

Punishment for vio-
lations.
Vol. 22, p. 407.

Officials, etc., giving
advance information
of crop reports.

office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, shall ask, accept, or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States.

SEC. 118. No Senator or Representative in, or Delegate or Resident Commissioner to Congress, or Senator, Representative, Delegate, or Resident Commissioner elect, or officer or employee of either House of Congress, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

SEC. 119. No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in the preceding section, or in any navy-yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever.

SEC. 120. No officer or employee of the United States mentioned in section one hundred and eighteen, shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

SEC. 121. No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

SEC. 122. Whoever shall violate any provision of the four preceding sections shall be fined not more than five thousand dollars, or imprisoned not more than three years, or both.

SEC. 123. Whoever, being an officer or employee of the United States or a person acting for or on behalf of the United States in any capacity under or by virtue of the authority of any department or office thereof, and while holding such office, employment, or position shall, by virtue of the office, employment, or position held by him; become possessed of any information which might exert an influence upon or affect the market value of any product of the soil grown within the United States, which information is by law or by the rules of the department or office required to be withheld from publication until a fixed time, and shall willfully impart, directly or indirectly, such information, or any part thereof, to any person not entitled under the law or the rules of the department or office to receive the



same; or shall, before such information is made public through regular official channels, directly or indirectly speculate in any such product respecting which he has thus become possessed of such information, by buying or selling the same in any quantity, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both: *Provided*, That no person shall be deemed guilty of a violation of any such rule, unless prior to such alleged violation he shall have had actual knowledge thereof.

SEC. 124. Whoever, being an officer or employee of the United States and whose duties require the compilation or report of statistics or information relative to the products of the soil, shall knowingly compile for issuance, or issue, any false statistics or information as a report of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Punishment for.

Proviso.
Actual knowledge required.

Official knowingly issuing false crop reports.

Punishment for.

Offenses against public justice.

CHAPTER SIX.

OFFENSES AGAINST PUBLIC JUSTICE.

Sec.

125. Perjury.

126. Subornation of perjury.

127. Stealing or altering process; procuring false bail, etc.

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135. Intimidation or corruption of witness, or grand or petit juror, or officer.

Sec.

136. Conspiring to intimidate party, witness, or juror.

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142. Rescue at execution.

143. Rescue of prisoner.

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146. Misprision of felony.

SEC. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

Perjury defined.
R. S., sec. 5392, p. 1045.

Punishment for.

SEC. 126. Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

Subornation of perjury.
R. S., sec. 5393, p. 1045.

SEC. 127. Whoever shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceeding, in any court of the United States, by means whereof any judgment is reversed, made void, or does not take effect; or whoever shall acknowledge, or procure to be acknowledged, in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than five thousand dollars, or imprisoned not more than seven years, or both; but this provision shall not extend to the acknowledgment of any judgment by an attorney, duly admitted, for any person against whom such judgment is had or given.

Stealing or altering process, procuring false bail, etc.
R. S., sec. 5394, p. 1045.

Punishment for.

SEC. 128. Whoever shall willfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal, remove,

Destroying, etc., public records.
R. S., sec. 5403, p. 1046.



Punishment for.

Destroying records
by officer in charge.
R. S., sec. 5408, p.
1047.

Punishment for.

Forging signature of
judge, etc.
R. S., sec. 5419, p.
1050.

Punishment for.

Bribery of judicial
officer.
R. S., sec. 5449, p.
1056.

Punishment for.

Judicial officer ac-
cepting bribe.
R. S., sec. 5499, p.
1066.

Punishment for.

Juror, referee, etc.,
accepting bribe.

Punishment for.

mutilate, obliterate, destroy, or steal, shall take and carry away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both.

SEC. 129. Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in the preceding section, shall willfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States.

SEC. 130. Whoever shall forge the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or shall forge or counterfeit the seal of any such court, or shall knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than five thousand dollars and imprisoned not more than five years.

SEC. 131. Whoever, directly or indirectly, shall give or offer, or cause to be given or offered, any money, property, or value of any kind, or any promise or agreement therefor, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereon, or because of any such action, vote, opinion, or decision, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honor, trust, or profit under the United States.

SEC. 132. Whoever, being a judge of the United States, shall in anywise accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or security for the payment of money, or for the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter, or cause depending before him, or because of any such opinion, ruling, decision, judgment, or decree, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall be forever disqualified to hold any office of honor, trust, or profit under the United States.

SEC. 133. Whoever, being a juror, referee, arbitrator, appraiser, assessor, auditor, master, receiver, United States commissioner, or other person authorized by any law of the United States to hear or determine any question, matter, cause, controversy, or proceeding, shall ask, receive, or agree to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment, or decision shall be influenced thereby, or because of any such vote, opinion, action, judgment, or decision, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.



SEC. 134. Whoever, being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, shall receive, or agree or offer to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, or because of such testimony, or such absence, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

Witness accepting
bribe.

Punishment for.

SEC. 135. Whoever corruptly, or by threats or force, or by any threatening letter or communication, shall endeavor to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or officer acting as such commissioner, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or officer acting as such commissioner, in the discharge of his duty, or who corruptly or by threats or force, or by any threatening letter or communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

Attempting to influ-
ence witness, juror, or
officer.
R. S., secs. 5399, 5404,
pp. 1046, 1047.

Punishment for.

SEC. 136. If two or more persons conspire to deter by force, intimidation, or threat, any party or witness in any court of the United States, or in any examination before a United States commissioner or officer acting as such commissioner, from attending such court or examination, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

Conspiring to intim-
idate party, witness,
or juror.
R. S., sec. 5405, p.
1047.

Punishment for.

SEC. 137. Whoever shall attempt to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any letter or any communication, in print or writing, in relation to such issue or matter, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both.

Attempting to influ-
ence juror by writing.
R. S., sec. 5405, p.
1047.

Punishment for.

SEC. 138. Whenever any marshal, deputy marshal, ministerial officer, or other person has in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, and such marshal, deputy marshal, ministerial officer, or other person voluntarily suffers such prisoner to escape, he shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

Allowing prisoner
to escape.
R. S., sec. 5409, p.
1047.

SEC. 139. The preceding section shall be construed to apply not only to cases in which the prisoner who escaped was charged or found guilty of an offense against the laws of the United States, and to cases in which the prisoner may be in custody charged with offenses against any foreign government with which the United States have treaties of extradition, but also to cases in which the prisoner may be held in custody for removal to or from the Philippine Islands as provided by law.

Application of pro-
visions.



Obstructing process
or assaulting officer.
R. S., sec. 5398, p.
1046.

SEC. 140. Whoever shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any mesne process or warrant, or any rule or order, or any other legal or judicial writ or process of any court of the United States, or United States commissioner, or shall assault, beat, or wound any officer or other person duly authorized; knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process, shall be fined not more than three hundred dollars and imprisoned not more than one year.

Punishment for.

Rescuing, etc., pris-
oner; concealing per-
son from arrest.

SEC. 141. Whoever shall rescue or attempt to rescue, from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process issued under the provisions of any law of the United States, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape from the custody of such officer or other person, or shall harbor or conceal any person for whose arrest a warrant or process has been so issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both.

Punishment for.

Rescue at execu-
tions.
R. S., sec. 5400, p.
1046.

SEC. 142. Whoever, by force, shall set at liberty or rescue any person found guilty in any court of the United States of any capital crime, while going to execution or during execution, shall be fined not more than twenty-five thousand dollars and imprisoned not more than twenty-five years.

Punishment for.

Rescue of prisoner.
R. S., sec. 5401, p.
1046.

SEC. 143. Whoever, by force, shall set at liberty or rescue any person who, before conviction, stands committed for any capital crime; or whoever, by force, shall set at liberty or rescue any person committed for or convicted of any offense other than capital, shall be fined not more than five hundred dollars and imprisoned not more than one year.

Punishment for.

Rescue of dead body
of executed offender.
R. S., sec. 5402, p.
1046.

SEC. 144. Whoever, by force, shall rescue or attempt to rescue, from the custody of any marshal or his officers, the dead body of an executed offender, while it is being conveyed to a place of dissection, as provided by section three hundred and thirty-one hereof, or by force shall rescue or attempt to rescue such body from the place where it has been deposited for dissection in pursuance of that section, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both.

Punishment for.

Extortion by in-
former.
R. S., sec. 5484, p.
1054.

SEC. 145. Whoever shall, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demand or receive any money or other valuable thing, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both.

Punishment for.

Misprision of felony.
R. S., sec. 5390, p.
1044.

SEC. 146. Whoever, having knowledge of the actual commission of the crime of murder or other felony cognizable by the courts of the United States, conceals and does not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, shall be fined not more than five hundred dollars, or imprisoned not more than three years, or both.

Punishment for.



CHAPTER SEVEN.

OFFENSES AGAINST THE CURRENCY, COINAGE, ETC.

Offenses against currency, coinage, etc.

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|---|---|
| <p>Sec.
147. "Obligation or other security of the United States" defined.
148. Forging or counterfeiting United States securities.
149. Counterfeiting national-bank notes.
150. Using plates to print notes without authority, etc.
151. Passing, selling, concealing, etc., forged obligations.
152. Taking impressions of tools, implements, etc.
153. Having in possession unlawfully such impressions.
154. Buying, selling, or dealing in forged bonds, notes, etc.
155. Secreting or removing tools or material used for printing bonds, notes, stamps, etc.
156. Counterfeiting notes, bonds, etc., of foreign governments.
157. Passing such forged notes, bonds, etc.
158. Counterfeiting notes of foreign banks.
159. Passing such counterfeit bank notes.
160. Having in possession such forged notes, bonds, etc.
161. Having unlawfully in possession or using plates for such notes, bonds, etc.
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164. Counterfeiting minor coins.
165. Falsifying, mutilating, or lightening coinage.
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167. Making or uttering coins in resemblance of money.
168. Making or issuing devices of minor coins.
169. Counterfeiting, etc., dies for coins of United States.
170. Counterfeiting, etc., dies for foreign coins.
171. Making, importing, or having in possession tokens, prints, etc., similar to United States or foreign coins.
172. Counterfeit obligations, securities, coins, or material for counterfeiting, to be forfeited.
173. Issue of search warrant for suspected counterfeits, etc.; forfeiture.
174. Circulating bills of expired corporations.
175. Imitating national-bank notes with printed advertisements thereon.
176. Mutilating or defacing national-bank notes.
177. Imitating United States securities or printing business cards on them.
178. Notes of less than one dollar not to be issued.</p> |
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SEC. 147. The words "obligation or other security of the United States" shall be held to mean all bonds, certificates of indebtedness, national-bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, which have been or may be issued under any Act of Congress.

SEC. 148. Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

SEC. 149. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be in imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered or spurious circulating note issued, or purporting to

"Obligation or other security of the United States" defined.
R. S., sec. 5413, p. 1049.

Forging or counterfeiting securities.
R. S., sec. 5414, p. 1049.
Punishment for.

Counterfeiting national-bank notes.
R. S., sec. 5415, p. 1049.



Punishment for.

Using plates to print
notes, without author-
ity, etc.
R. S., sec. 5430, p.
1052.

have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than one thousand dollars and imprisoned not more than fifteen years.

SEC. 150. Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or whoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than fifteen years, or both.

Distinctive paper
without authority.

Punishment for.

Uttering, etc., forged
obligations.
R. S., sec. 5431, p.
1053.

SEC. 151. Whoever, with intent to defraud, shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

Punishment for.



SEC. 152. Whoever, without authority from the United States, shall take, procure, or make, upon lead, foil, wax, plaster, paper, or any other substance or material, an impression, stamp, or imprint of, from, or by the use of any bedplate, bedpiece, die, roll, plate, seal, type, or other tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things to be used or fitted or intended to be used in printing, stamping, or impressing any kind or description of obligation or other security of the United States now authorized or hereafter to be authorized by the United States, or circulating note or evidence of debt of any banking association under the laws thereof, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Taking impressions
of tools, implements,
etc.
R. S., sec. 5432, p.
1053.

Punishment for.

SEC. 153. Whoever, with intent to defraud, shall have in his possession, keeping, custody, or control, without authority from the United States, any imprint, stamp, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument, or thing, used, or fitted or intended to be used, for any of the purposes mentioned in the preceding section; or whoever, with intent to defraud, shall sell, give, or deliver any such imprint, stamp, or impression to any other person, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Having unlawful
possession of impres-
sions.
R. S., sec. 5433, p.
1053.

Punishment for.

SEC. 154. Whoever shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeited, or altered obligation or other security of the United States, or circulating note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any Act of Congress, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Dealing in counter-
feited securities.
R. S., sec. 5434, p.
1053.

Punishment for.

SEC. 155. Whoever, without authority from the United States, shall secrete within, embezzle, or take and carry away from any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any bedpiece, bedplate, roll, plate, die, seal, type, or other tool, implement, or thing used or fitted to be used in stamping or printing, or in making some other tool or implement used or fitted to be used in stamping or printing, any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional currency note, or other paper, instrument, obligation, device, or document, now or hereafter authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper, parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of the papers, instruments, or obligations hereinbefore named, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put the same in circulation or not, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Secreting or embez-
zling tools and mate-
rials for printing se-
curities.
R. S., sec. 5453, p.
1057.

Punishment for.

SEC. 156. Whoever, within the United States or any place subject to the jurisdiction thereof, with intent to defraud, shall falsely make, alter, forge, or counterfeit any bond, certificate, obligation, or other security in imitation of, or purporting to be an imitation of, any bond,

Counterfeiting for-
eign securities.
Vol. 23, p. 22.



Punishment for.

Uttering counterfeit
foreign securities.
Vol. 23, p. 23.

Punishment for.

Counterfeiting notes
of foreign banks.
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Punishment for.

Uttering counterfeit
notes of foreign banks.
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Punishment for.

Having in posses-
sion counterfeit
foreign securities, etc.
Vol. 23, p. 23.

Punishment for.

Having in posses-
sion, etc., counterfeit
plates of foreign se-
curities, etc.
Vol. 23, p. 23.

certificate, obligation, or other security of any foreign government, issued or put forth under the authority of such foreign government, or any treasury note, bill, or promise to pay issued by such foreign government, and intended to circulate as money, either by law, order, or decree of such foreign government; or whoever shall cause or procure to be so falsely made, altered, forged, or counterfeited, or shall knowingly aid or assist in making, altering, forging, or counterfeiting, any such bond, certificate, obligation, or other security, or any such treasury note, bill, or promise to pay, intended as aforesaid to circulate as money, shall be fined not more than five thousand dollars and imprisoned not more than five years.

SEC. 157. Whoever, within the United States or any place subject to the jurisdiction thereof, knowingly and with intent to defraud, shall utter, pass, or put off, in payment or negotiation, any false, forged, or counterfeited bond, certificate, obligation, security, treasury note, bill, or promise to pay, mentioned in the section last preceding, whether the same was made, altered, forged, or counterfeited within the United States or not, shall be fined not more than three thousand dollars and imprisoned not more than three years.

SEC. 158. Whoever, within the United States or any place subject to the jurisdiction thereof, with intent to defraud, shall falsely make, alter, forge, or counterfeit, or cause or procure to be so falsely made, altered, forged, or counterfeited, or shall knowingly aid and assist in the false making, altering, forging, or counterfeiting of any bank note or bill issued by a bank or corporation of any foreign country, and intended by the law or usage of such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country, shall be fined not more than two thousand dollars and imprisoned not more than two years.

SEC. 159. Whoever, within the United States or any place subject to the jurisdiction thereof, shall utter, pass, put off, or tender in payment, with intent to defraud, any such false, forged, altered, or counterfeited bank note or bill, as mentioned in the preceding section, knowing the same to be so false, forged, altered, and counterfeited, whether the same was made, forged, altered, or counterfeited within the United States or not, shall be fined not more than one thousand dollars and imprisoned not more than one year.

SEC. 160. Whoever, within the United States or any place subject to the jurisdiction thereof, shall have in his possession any false, forged, or counterfeit bond, certificate, obligation, security, treasury note, bill, promise to pay, bank note, or bill issued by a bank or corporation of any foreign country, with intent to utter, pass, or put off the same, or to deliver the same to any other person with intent that the same may thereafter be uttered, passed, or put off as true, or shall knowingly deliver the same to any other person with such intent, shall be fined not more than one thousand dollars and imprisoned not more than one year.

SEC. 161. Whoever, within the United States or any place subject to the jurisdiction thereof, except by lawful authority, shall have control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any counterfeit note, bond, obligation, or other security, in whole or in part, of any foreign government, bank, or corporation, or shall use such plate, stone, or other thing, or knowingly permit or suffer the same to be used in counterfeiting such foreign obligations, or any part thereof; or whoever shall make or engrave, or cause or procure to be made or engraved, or shall assist in making or engraving, any plate, stone, or other thing, in the likeness or similitude of any plate, stone, or other thing designated for the printing of the genuine issues of the obligations of any foreign government, bank, or corporation;



or whoever shall print, photograph, or in any other manner make, execute, or sell, or cause to be printed, photographed, made, executed, or sold, or shall aid in printing, photographing, making, executing, or selling, any engraving, photograph, print, or impression in the likeness of any genuine note, bond, obligation, or other security, or any part thereof, of any foreign government, bank, or corporation; or whoever shall bring into the United States or any place subject to the jurisdiction thereof, any counterfeit plate, stone, or other thing, or engraving, photograph, print, or other impressions of the notes, bonds, obligations, or other securities of any foreign government, bank, or corporation, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

SEC. 162. Whoever shall so place or connect together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be deemed guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 163. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting any coin or bars in resemblance or similitude of the gold or silver coins or bars which have been, or hereafter may be, coined or stamped at the mints and assay offices of the United States, or in resemblance or similitude of any foreign gold or silver coin which by law is, or hereafter may be, current in the United States, or are in actual use and circulation as money within the United States; or whoever shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person or persons whomsoever, or shall have in his possession any such false, forged, or counterfeited coin or bars, knowing the same to be false, forged, or counterfeited, with intent to defraud any body politic or corporate, or any person or persons whomsoever, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

SEC. 164. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting any coin in the resemblance or similitude of any of the minor coins which have been, or hereafter may be, coined at the mints of the United States; or whoever shall pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, or have in his possession any such false, forged, or counterfeited coin, with intent to defraud any person whomsoever, shall be fined not more than one thousand dollars and imprisoned not more than three years.

SEC. 165. Whoever, fraudulently, by any art, way, or means, shall deface, mutilate, impair, diminish, falsify, scale, or lighten, or cause or procure to be fraudulently defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, or willingly aid or assist in fraudulently defacing, mutilating, impairing, diminishing, falsifying, scaling, or lightening, the gold or silver coins which have been, or which may hereafter be, coined at the mints of the United States, or any foreign gold or silver coins which are by law made current or are in actual use or circulation as money within the United States or in any place subject to the jurisdiction thereof; or whoever shall pass,

Punishment for.

Connecting parts of different bills, etc.

Punishment for.

Counterfeiting gold or silver coins or bars.
R. S., sec. 5457, p. 1058.

Punishment for.

Counterfeiting minor coins.
R. S., sec. 5463, p. 1058.

Punishment for.

Falsifying, mutilating or lightening coins.
Vol. 29, p. 625.
R. S., sec. 5459, p. 625.



utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, or shall have in his possession any such defaced, mutilated, impaired, diminished, falsified, scaled, or lightened coin, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, shall be fined not more than two thousand dollars and imprisoned not more than five years.

Punishment for.

Debasing coins by officers of the mint.
R. S., sec. 5400, p. 1058.

SEC. 166. If any of the gold or silver coins struck or coined at any of the mints of the United States shall be debased, or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to law, or if any of the scales or weights used at any of the mints or assay offices of the United States shall be defaced, altered, increased, or diminished through the fault or connivance of any officer or person employed at the said mints or assay offices, with a fraudulent intent; or if any such officer or person shall embezzle any of the metals at any time committed to his charge for the purpose of being coined, or any of the coins struck or coined at the said mints, or any medals, coins, or other moneys of said mints or assay offices at any time committed to his charge, or of which he may have assumed the charge, every such officer or person who commits any of the said offenses shall be fined not more than ten thousand dollars and imprisoned not more than ten years.

Punishment for.

Making or uttering coins resembling money.
R. S., sec. 5461, p. 1059.

SEC. 167. Whoever, except as authorized by law, shall make or cause to be made, or shall utter or pass, or attempt to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for the use and purpose of current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined not more than three thousand dollars, or imprisoned not more than five years, or both.

Punishment for.

Making or uttering devices of minor coins.
R. S., sec. 5462, p. 1059.

SEC. 168. Whoever, not lawfully authorized, shall make, issue, or pass, or cause to be made, issued, or passed, any coin, card, token, or device in metal, or its compounds, which may be intended to be used as money for any one-cent, two-cent, three-cent, or five-cent piece, now or hereafter authorized by law, or for coins of equal value, shall be fined not more than one thousand dollars and imprisoned not more than five years.

Punishment for.

Counterfeiting, etc., dies for United States coins.
Vol. 28, p. 742.

SEC. 169. Whoever, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mold, or any part thereof, either of steel or plaster, or any other substance whatsoever, in likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining or making of any of the genuine gold, silver, nickel, bronze, copper, or other coins of the United States, that have been or hereafter may be coined at the mints of the United States; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall permit the same to be used for or in aid of the counterfeiting of any of the coins of the United States hereinbefore mentioned, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

Punishment for.

Counterfeiting, etc., dies for foreign coins.
Vol. 26, p. 742.

SEC. 170. Whoever, within the United States or any place subject to the jurisdiction thereof, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mold, or any part thereof, either of steel or of plaster, or of any other substance whatsoever, in the likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining of the genuine coin of any foreign govern-



ment; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall conceal, or knowingly suffer the same to be used for the counterfeiting of any foreign coin, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both.

SEC. 171. Whoever, within the United States or any place subject to the jurisdiction thereof, shall make, or cause or procure to be made, or shall bring therein, from any foreign country, or shall have in possession with intent to sell, give away, or in any other manner use the same, any business or professional card, notice, placard, token, device, print, or impression, or any other thing whatsoever, in the likeness or similitude as to design, color, or the inscription thereon, of any of the coins of the United States or of any foreign country that have been or hereafter may be issued as money, either under the authority of the United States or under the authority of any foreign government, shall be fined not more than one hundred dollars. But nothing in this section shall be construed to forbid or prevent the printing and publishing of illustrations of coins and medals, or the making of the necessary plates for the same, to be used in illustrating numismatic and historical books and journals and the circulars of legitimate publishers and dealers in the same.

SEC. 172. All counterfeits of any obligation or other security of the United States or of any foreign government, or counterfeits of any of the coins of the United States or of any foreign government, and all material or apparatus fitted or intended to be used, or that shall have been used, in the making of any such counterfeit obligation or other security or coins hereinbefore mentioned, that shall be found in the possession of any person without authority from the Secretary of the Treasury or other proper officer to have the same, shall be taken possession of by any authorized agent of the Treasury Department and forfeited to the United States, and disposed of in any manner the Secretary of the Treasury may direct. Whoever having the custody or control of any such counterfeits, material, or apparatus shall fail or refuse to surrender possession thereof upon request by any such authorized agent of the Treasury Department, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both.

SEC. 173. The several judges of courts established under the laws of the United States and United States commissioners may, upon proper oath or affirmation, within their respective jurisdictions, issue a search warrant authorizing any marshal of the United States, or any other person specially mentioned in such warrant, to enter any house, store, building, boat, or other place named in such warrant, in which there shall appear probable cause for believing that the manufacture of counterfeit money, or the concealment of counterfeit money, or the manufacture or concealment of counterfeit obligations or coins of the United States or of any foreign government, or the manufacture or concealment of dies, hubs, molds, plates, or other things fitted or intended to be used for the manufacture of counterfeit money, coins, or obligations of the United States or of any foreign government, or of any bank doing business under the authority of the United States or of any State or Territory thereof, or of any bank doing business under the authority of any foreign government, or of any political division of any foreign government, is being carried on or practiced, and there search for any such counterfeit money, coins, dies, hubs, molds, plates, and other things, and for any such obligations, and if any such be found, to seize and secure the same and to make return thereof to the proper authority: and all such counterfeit money, coins, dies, hubs, molds, plates, and other things, and all such counterfeit obligations so seized shall be forfeited to the United States.

Punishment for.

Making, importing, etc., tokens, prints, etc., similar to United States or foreign coins.
Vol. 26, p. 742.

Punishment for.
Illustrations permitted.

Forfeiture of counterfeit obligations, securities, coins, and material.
Vol. 26, p. 742.

Punishment for failing to deliver.

Issue of search warrants for suspected counterfeiters, etc.
Vol. 26, p. 743.

Forfeiture of seized articles.



Circulating bills of
expired banks.
R. S., sec. 5437, p.
1054.

Punishment for.

Circulation permit-
ted.

Imitating national-
bank notes with ad-
vertisements thereon.
R. S., sec. 5188, p.
1003.

Punishment for.

Mutilating, etc.,
national bank notes.
R. S., sec. 5189, p.
1003.

Punishment for.

Imitating securities
or printing advertise-
ments thereon.
R. S., sec. 3708, p. 732.

Punishment for.

Issuing notes less
than one dollar.
R. S., sec. 8583, p. 707.

Punishment for.

SEC. 174. In all cases where the charter of any corporation which has been or may be created by Act of Congress has expired or may hereafter expire, if any director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose of paying or redeeming its notes and obligations, shall knowingly issue, reissue, or utter as money, or in any other way knowingly put in circulation any bill, note, check, draft, or other security purporting to have been made by any such corporation whose charter has expired, or by any officer thereof, or purporting to have been made under authority derived therefrom, or if any person shall knowingly aid in any such act, he shall be fined not more than ten thousand dollars, or imprisoned not more than five years, or both. But nothing herein shall be construed to make it unlawful for any person, not being such director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose hereinbefore set forth, who has received or may hereafter receive such bill, note, check, draft, or other security, bona fide and in the ordinary transactions of business, to utter as money or otherwise circulate the same.

SEC. 175. It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any circulating note or other obligation or security of any banking association organized or acting under the laws of the United States which has been or may be issued under any Act of Congress, or to write, print, or otherwise impress upon any such note, obligation, or security, any business or professional card, notice or advertisement, or any notice or advertisement of any matter or thing whatever. Whoever shall violate any provision of this section shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

SEC. 176. Whoever shall mutilate, cut, deface, disfigure, or perforate with holes, or unite or cement together, or do any other thing to any bank bill, draft, note, or other evidence of debt, issued by any national banking association, or shall cause or procure the same to be done, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued by said association, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

SEC. 177. It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use, any business or professional card, notice, placard, circular, handbill, or advertisement, in the likeness or similitude of any bond, certificate of indebtedness, certificate of deposit, coupon, United States note, Treasury note, gold certificate, silver certificate, fractional note, or other obligation or security of the United States which has been or may be issued under or authorized by any Act of Congress heretofore passed or which may hereafter be passed; or to write, print, or otherwise impress upon any such instrument, obligation, or security, any business or professional card, notice, or advertisement, or any notice or advertisement of any matter or thing whatever. Whoever shall violate any provision of this section shall be fined not more than five hundred dollars.

SEC. 178. No person shall make, issue, circulate, or pay out any note, check, memorandum, token, or other obligation for a less sum than one dollar, intended to circulate as money or to be received or used in lieu of lawful money of the United States; and every person so offending shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.



CHAPTER EIGHT.

OFFENSES AGAINST THE POSTAL SERVICE.

Offenses against
postal service.

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| <p>Sec.</p> <p>179. Conducting post-office without authority.</p> <p>180. Illegal carrying of mail by carriers and others.</p> <p>181. Conveyance of mail by private express forbidden.</p> <p>182. Transporting persons unlawfully conveying mail.</p> <p>183. Sending letters by private express.</p> <p>184. Conveying of letters over post routes.</p> <p>185. Carrying letters out of the mail on board of vessel.</p> <p>186. When conveying of letters by private persons is lawful.</p> <p>187. Wearing uniform of carrier without authority.</p> <p>188. Vehicles, etc., claiming to be mail carriers.</p> <p>189. Injuring mail bags, etc.</p> <p>190. Stealing post-office property.</p> <p>191. Stealing or forging mail locks or keys.</p> <p>192. Breaking into and entering post-office.</p> <p>193. Unlawfully entering postal car, etc.</p> <p>194. Stealing, secreting, embezzling, etc., mail matter or contents.</p> <p>195. Postmaster or employee of postal service detaining, destroying, or embezzling letter, etc.</p> <p>196. Postmaster, etc., detaining or destroying newspapers.</p> <p>197. Assaulting mail carrier with intent to rob, and robbing mail.</p> <p>198. Injuring letter boxes or mail matter; assaulting carrier, etc.</p> <p>199. Deserting the mail.</p> <p>200. Delivery of letters by master of vessel.</p> <p>201. Obstructing the mail.</p> <p>202. Ferryman delaying the mail.</p> <p>203. Letters carried in a foreign vessel to be deposited in a post-office.</p> <p>204. Vessels to deliver letters at post-office; oath.</p> | <p>Sec.</p> <p>205. Using, selling, etc., canceled stamps; removing cancellation marks from stamps, etc.</p> <p>206. False returns to increase compensation.</p> <p>207. Collection of unlawful postage forbidden.</p> <p>208. Unlawful pledging or sale of stamps.</p> <p>209. Failure to account for postage and to cancel stamps, etc., by officials.</p> <p>210. Issuing money order without payment.</p> <p>211. Obscene, etc., matter nonmailable.</p> <p>212. Libelous and indecent wrappers and envelopes.</p> <p>213. Lottery, gift enterprise, etc., circulars, etc., not mailable.</p> <p>214. Postmasters not to be lottery agents.</p> <p>215. Use of mails to promote frauds.</p> <p>216. Fraudulently assuming fictitious address.</p> <p>217. Poisons and explosives nonmailable.</p> <p>218. Counterfeiting money orders.</p> <p>219. Counterfeiting postage stamps.</p> <p>220. Counterfeiting, etc., foreign stamps.</p> <p>221. Inclosing higher class in lower class matter.</p> <p>222. Postmaster illegally approving bond, etc.</p> <p>223. False evidence as to second-class matter.</p> <p>224. Inducing or prosecuting false claims.</p> <p>225. Misappropriation of postal funds or property.</p> <p>226. Employees not to become interested in contracts.</p> <p>227. Fraudulent use of official envelopes.</p> <p>228. Fraudulent increase of weight of mail.</p> <p>229. Offenses against foreign mail in transit.</p> <p>230. Omission to take oath.</p> <p>231. Definitions.</p> |
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SEC. 179. Whoever, without authority from the Postmaster-General, shall set up or profess to keep any office or place of business bearing the sign, name, or title of post-office, shall be fined not more than five hundred dollars.

Conducting post-office without authority.
R. S., sec. 3829, p. 750.
Penalty.

SEC. 180. Whoever, being concerned in carrying the mail, shall collect, receive, or carry any letter or packet, or cause or procure the same to be done, contrary to law, shall be fined not more than fifty dollars, or imprisoned not more than thirty days, or both.

Illegal carrying of mail by officials, etc.
R. S., sec. 3881, p. 770.
Punishment for.

SEC. 181. Whoever shall establish any private express for the conveyance of letters or packets, or in any manner cause or provide for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place, to any other city, town, or place, between which the mail is regularly carried, or whoever shall aid or assist therein shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both: *Provided*, That nothing contained in this section shall be construed as prohibiting any person from receiving and delivering to the nearest post-office, postal car, or other authorized depository for mail matter, any mail matter properly stamped.

Conveying mail by private express.
R. S., sec. 3982, p. 770.

Punishment for.
Proviso.
Delivery to post-office, etc., allowed.



Transporting persons unlawfully conveying mail.
R. S., sec. 3981, p. 770.

Penalty.

Sending letters by private express.
R. S., sec. 3984, p. 770.
Penalty.

Carrying letters out of the mail over post routes.
R. S., sec. 3985, p. 770.

Penalty.

Carrying letters out of the mail on vessels.
R. S., sec. 3986, p. 771.
Punishment for.

When conveyance by private persons is lawful.

Wearing carrier's uniform without authority.
R. S., sec. 3987, p. 755.

Punishment for.

Vehicles, etc., claiming to be mail carriers.
R. S., sec. 3979, p. 770.

Punishment for.

Injuring mail bags, etc.
R. S., sec. 5476, p. 1062.

Punishment for.

Stealing post-office property.
R. S., sec. 5475, p. 1062.

Punishment for.

SEC. 182. Whoever, being the owner, driver, conductor, master, or other person having charge of any stagecoach, railway car, steamboat, or other vehicle or vessel, shall knowingly convey or knowingly permit the conveyance of any person acting or employed as a private express for the conveyance of letters or packets, and actually in possession of the same for the purpose of conveying them, contrary to law, shall be fined not more than one hundred and fifty dollars.

SEC. 183. Whoever shall transmit by private express or other unlawful means, or deliver to any agent thereof, or deposit or cause to be deposited at any appointed place, for the purpose of being so transmitted, any letter or packet, shall be fined not more than fifty dollars.

SEC. 184. Whoever, being the owner, driver, conductor, master, or other person having charge of any stage-coach, railway car, steamboat, or conveyance of any kind which regularly performs trips at stated periods on any post route, or from any city, town, or place to any other city, town, or place between which the mail is regularly carried, and which shall carry, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, to the current business of the carrier, or to some article carried at the same time by the same stage-coach, railway car, or other vehicle, except as otherwise provided by law, shall be fined not more than fifty dollars.

SEC. 185. Whoever shall carry any letter or packet on board any vessel which carries the mail, otherwise than in such mail, except as otherwise provided by law, shall be fined not more than fifty dollars, or imprisoned not more than one month, or both.

SEC. 186. Nothing in this chapter shall be construed to prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only.

SEC. 187. Whoever, not being connected with the letter-carrier branch of the postal service, shall wear the uniform or badge which may be prescribed by the Postmaster-General, to be worn by letter carriers, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

SEC. 188. It shall be unlawful to paint, print, or in any manner to place upon or attach to any steamboat or other vessel, or any car, stage-coach, vehicle, or other conveyance, not actually used in carrying the mail, the words "United States Mail," or any words, letters, or characters of like import; or to give notice, by publishing in any newspaper or otherwise, that any steamboat or other vessel, or any car, stage-coach, vehicle, or other conveyance, is used in carrying the mail, when the same is not actually so used; and every person who shall violate, and every owner, receiver, lessee, or managing operator thereof, who shall cause, suffer, or permit the violation of any provision of this section, shall be liable, and shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

SEC. 189. Whoever shall tear, cut, or otherwise injure any mail bag, pouch, or other thing used or designed for use in the conveyance of the mail, or shall draw or break any staple or loosen any part of any lock, chain, or strap attached thereto, with intent to rob or steal any such mail, or to render the same insecure, shall be fined not more than five hundred dollars, or imprisoned not more than three years, or both.

SEC. 190. Whoever shall steal, purloin, or embezzle any mail bag or other property in use by or belonging to the Post-Office Department, or shall appropriate any such property to his own or any other than its proper use, or shall convey away any such property to the hindrance or detriment of the public service, shall be fined not more than two hundred dollars, or imprisoned not more than three years, or both.



SEC. 191. Whoever shall steal, purloin, embezzle, or obtain by any false pretense, or shall aid or assist in stealing, purloining, embezzling, or obtaining by any false pretense, any key suited to any lock adopted by the Post-Office Department and in use on any of the mails or bags thereof, or any key to any lock box, lock drawer, or other authorized receptacle for the deposit or delivery of mail matter; or whoevershall knowingly and unlawfully make, forge, or counterfeit, or cause to be unlawfully made, forged, or counterfeited, any such key, or shall have in his possession any such mail lock or key with the intent unlawfully or improperly to use, sell, or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold, or otherwise disposed of; or whoever, being engaged as a contractor or otherwise in the manufacture of any such mail lock or key, shall deliver or cause to be delivered, any finished or unfinished lock or key used or designed for use by the department, or the interior part of any such lock, to any person not duly authorized under the hand of the Postmaster-General and the seal of the Post-Office Department, to receive the same, unless the person receiving it is the contractor for furnishing the same or engaged in the manufacture thereof in the manner authorized by the contract, or the agent of such manufacturer, shall be fined not more than five hundred dollars and imprisoned not more than ten years.

Stealing or forging
mail locks or keys.
R. S., sec. 5477, p.
1062.

Punishment for.

SEC. 192. Whoever shall forcibly break into or attempt to break into any post-office, or any building used in whole or in part as a post-office, with intent to commit in such post-office, or building, or part thereof, so used, any larceny or other depredation, shall be fined not more than one thousand dollars and imprisoned not more than five years.

Breaking into and
entering post-office.
R. S., sec. 5478, p.
1062.

SEC. 193. Whoever, by violence, shall enter a post-office car, or any apartment in any car, steamboat, or vessel, assigned to the use of the Mail Service, or shall willfully or maliciously assault or interfere with any postal clerk in the discharge of his duties in connection with such car, steamboat, vessel, or apartment thereof, or shall willfully aid or assist therein, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

Unlawfully entering
post-office car, etc.
Vol. 32, p. 1176.

Punishment for.

SEC. 194. Whoever shall steal, take, or abstract, or by fraud or deception obtain, from or out of any mail, post-office, or station thereof, or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or shall abstract or remove from any such letter, package, bag, or mail, any article or thing contained therein, or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or whoever shall buy, receive, or conceal, or aid in buying, receiving, or concealing, or shall unlawfully have in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been so stolen, taken, embezzled, or abstracted; or whoever shall take any letter, postal card, or package, out of any post-office or station thereof, or out of any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post-office or station thereof, or other authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with a design to obstruct the correspondence, or to pry into the business or secrets of another, or shall open, secrete, embezzle, or destroy the same; shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both.

Stealing, secreting,
embezzling, etc., mail
matter.
R. S., secs. 3892, 5469;
pp. 753, 1060.

Punishment for.

SEC. 195. Whoever, being a postmaster or other person employed in any department of the postal service, shall unlawfully detain, delay, or open any letter, postal card, package, bag, or mail intrusted to him or which shall come into his possession, and which was intended

Postmaster or postal
employee detaining,
destroying, or embez-
zling mail matter.
R. S., secs. 3890, 3891,
5467, pp. 757, 1060.



Punishment for.	to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or station thereof established by authority of the Postmaster-General; or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail; or shall steal, abstract, or remove from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both.
Postmasters, etc., detaining or destroying newspapers. R. S., sec. 5471, p. 1061.	SEC. 196. Whoever, being a postmaster or other person employed in any department of the postal service, shall improperly detain, delay, embezzle, or destroy any newspaper, or permit any other person to detain, delay, embezzle, or destroy the same, or open, or permit any other person to open, any mail or package of newspapers not directed to the office where he is employed; or whoever shall open, embezzle, or destroy any mail or package of newspapers not being directed to him, and he not being authorized to open or receive the same; or whoever shall take or steal any mail or package of newspapers from any post-office or from any person having custody thereof, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both.
By other persons.	SEC. 197. Whoever shall assault any person having lawful charge, control, or custody of any mail matter, with intent to rob, steal, or purloin such mail matter or any part thereof, or shall rob any such person of such mail or any part thereof, shall, for a first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery, he shall wound the person having custody of the mail, or put his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned twenty-five years.
Punishment for. Using weapon, etc.	SEC. 198. Whoever shall willfully injure, tear down, or destroy any letter box, pillar box, lock box, lock drawer, or other receptacle established or approved by the Postmaster-General for the safe deposit of matter for the mail or for delivery, or any lock or similar device belonging or attached thereto, or any letter box or other receptacle designated or approved by the Postmaster-General for the receipt or delivery of mail matter on any rural free-delivery route, star route, or other mail route, or shall break open the same; or shall willfully injure, deface, or destroy any mail matter deposited in any letter box, pillar box, lock box, lock drawer, or other receptacle established or approved by the Postmaster-General for the safe deposit of matter for the mail or for delivery; or shall willfully take or steal such matter from or out of any such letter box, pillar box, lock box, lock drawer, or other receptacle, or shall willfully and maliciously assault any letter or mail carrier, knowing him to be such, while engaged on his route in the discharge of his duty as such carrier, or shall willfully aid or assist in any offense defined in this section, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.
Punishment for. Injury to letter boxes, etc. R. S., secs. 5469, 5466, pp. 755, 1060. Vol. 32, p. 1175.	SEC. 199. Whoever, having taken charge of any mail, shall voluntarily quit or desert the same before he has delivered it into the post-office at the termination of the route, or to some known mail carrier, messenger, agent, or other employee in the postal service authorized to receive the same, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.
Assault on letter carrier.	SEC. 200. The master or other person having charge or control of any steamboat or other vessel passing between ports or places in the United States, arriving at any such port or place where there is a post-office, shall deliver to the postmaster or at the post-office within three hours after his arrival, if in the daytime, and if at night, within two hours after the next sunrise, all letters and packages brought by him or
Punishment for.	
Deserting the mail. R. S., sec. 5474, p. 1062.	
Punishment for.	
Delivery of letters by master of vessel. R. S., sec. 3977, p. 770.	



within his power or control and not relating to the cargo, addressed to or destined for such port or place, for which he shall receive from the postmaster two cents for each letter or package so delivered, unless the same is carried under a contract for carrying the mail; and for every failure so to deliver such letters or packages, the master or other person having charge or control of such steamboat or other vessel, shall be fined not more than one hundred and fifty dollars.

SEC. 201. Whoever shall knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier, or car, steamboat, or other conveyance or vessel carrying the same, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

SEC. 202. Whoever, being a ferryman, shall delay the passage of the mail by willful neglect or refusal to transport the same across any ferry, shall be fined not more than one hundred dollars.

SEC. 203. All letters or other mailable matter conveyed to or from any part of the United States by any foreign vessel, except such sealed letters relating to such vessel or any part of the cargo thereof as may be directed to the owners or consignees of the vessel, shall be subject to postage charge, whether addressed to any person in the United States or elsewhere, provided they are conveyed by the packet or other ship of a foreign country imposing postage on letters or other mailable matter conveyed to or from such country by any vessel of the United States; and such letters or other mailable matter carried in foreign vessels, except such sealed letters relating to the vessel or any part of the cargo thereof as may be directed to the owners or consignees, shall be delivered into the United States post-office by the master or other person having charge or control of such vessel when arriving, and be taken from the United States post-office when departing, and the postage justly chargeable by law paid thereon; and for refusing or failing to do so, or for conveying such letters or other mailable matter, or any letters or other mailable matter, intended to be conveyed in any vessel of such foreign country, over or across the United States, or any portion thereof, the party offending shall be fined not more than one thousand dollars.

SEC. 204. No vessel arriving within a port or collection district of the United States shall be allowed to make entry or break bulk until all letters on board are delivered to the nearest post-office, and the master or other person having charge or control thereof has signed and sworn to the following declaration before the collector or other proper customs officer:

I, A. B., master ———, of the ———, arriving from ———, and now lying in the port of ———, do solemnly swear (or affirm) that I have to the best of my knowledge and belief delivered to the post-office at ——— every letter and every bag, packet, or parcel of letters which was on board the said vessel during her last voyage, or which were in my possession or under my power or control.

And any master or other person having charge or control of such vessel who shall break bulk before he has delivered such letters shall be fined not more than one hundred dollars.

SEC. 205. Whoever shall use or attempt to use in payment of postage, any canceled postage stamp, whether the same has been used or not; or shall remove, attempt to remove, or assist in removing, the canceling or defacing marks from any postage stamp, or the superscription from any stamped envelope, or postal card, that has once been used in payment of postage, with the intent to use the same for a like purpose, or to sell or offer to sell the same, or shall knowingly have in possession any such postage stamp, stamped envelope, or postal card, with intent to use the same, or shall knowingly sell or offer to sell any such postage stamp, stamped envelope, or postal card,

Penalty for failure.

Obstructing the mail.
R. S., sec. 3935, p. 772.
Punishment for.

Ferryman delaying mail.
R. S., sec. 3996, p. 772.
Penalty.

Letters carried in foreign vessel to be deposited in post-office.
R. S., sec. 4016, p. 776.

Penalty for failure.

Vessels to deliver letters at post-office before entry.
R. S., sec. 3988, p. 771.

Oath.

Penalty for failure.

Using, etc., canceled stamps.
R. S., secs. 3922-3925, p. 762.
Vol. 20, p. 362.



or use or attempt to use the same in payment of postage; or whoever unlawfully and willfully shall remove from any mail matter any stamp attached thereto in payment of postage; or shall knowingly use or cause to be used in payment of postage, any postage stamp, postal card, or stamped envelope, issued in pursuance of law, which has already been used for a like purpose; shall, if he be a person employed in the postal service, be fined not more than five hundred dollars, or imprisoned not more than three years, or both; and if he be a person not employed in the postal service, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

Punishment for.
Postal employees.

Other persons.

False returns by
postmasters to in-
crease compensation.
Vol. 20, p. 141.

SEC. 206. Whoever, being a postmaster or other person employed in any branch of the postal service, shall make, or assist in making, or cause to be made, a false return, statement, or account to any officer of the United States, or shall make, assist in making, or cause to be made, a false entry in any record, book, or account, required by law or the rules or regulations of the Post-Office Department to be kept in respect of the business or operations of any post-office or other branch of the postal service, for the purpose of fraudulently increasing his compensation or the compensation of the postmaster or any employee in a post-office; or whoever, being a postmaster or other person employed in any post-office or station thereof, shall induce, or attempt to induce, for the purpose of increasing the emoluments or compensation of his office, any person to deposit mail matter in, or forward in any manner for mailing at, the office where such postmaster or other person is employed, knowing such matter to be properly mailable at another post-office, shall be fined not more than five hundred dollars, or imprisoned not more than two years, or both.

Punishment for.

Collecting unlawful
postage.
R. S., sec. 3899, p. 759.

Punishment for.

SEC. 207. Whoever, being a postmaster or other person authorized to receive the postage of mail matter, shall fraudulently demand or receive any rate of postage or gratuity or reward other than is provided by law for the postage of such mail matter, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

Unlawful pledging
or sale of stamps.
R. S., sec. 3920, p. 762.
Vol. 20, p. 141.

SEC. 208. Whoever, being a postmaster or other person employed in any branch of the postal service, and being intrusted with the sale or custody of postage stamps, stamped envelopes, or postal cards, shall use or dispose of them in the payment of debts, or in the purchase of merchandise or other salable articles, or pledge or hypothecate the same, or sell or dispose of them except for cash; or sell or dispose of postage stamps or postal cards for any larger or less sum than the values indicated on their faces; or sell or dispose of stamped envelopes for a larger or less sum than is charged therefor by the Post-Office Department for like quantities; or sell or dispose of, or cause to be sold or disposed of, postage stamps, stamped envelopes, or postal cards at any point or place outside of the delivery of the office where such postmaster or other person is employed; or induce or attempt to induce, for the purpose of increasing the emoluments or compensation of such postmaster, or the emoluments or compensation of any other person employed in such post-office or any station thereof, or the allowances or facilities provided therefor, any person to purchase at such post-office or any station thereof, or from any employee of such post-office, postage stamps, stamped envelopes, or postal cards; or sell or dispose of postage stamps, stamped envelopes, or postal cards, otherwise than as provided by law or the regulations of the Post-Office Department, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

Inducing purchases
to increase pay.

Punishment for.

Failing to account
for postage due, etc.
Vol. 20, p. 362.

SEC. 209. Whoever, being a postmaster or other person engaged in the postal service, shall collect and fail to account for the postage due upon any article of mail matter which he may deliver, without having previously affixed and canceled the special stamp provided by law,



or shall fail to affix such stamp, shall be fined not more than fifty dollars.

SEC. 210. Whoever, being a postmaster or other person employed in any branch of the postal service, shall issue a money order without having previously received the money therefor, shall be fined not more than five hundred dollars.

SEC. 211. Every obscene, lewd, or lascivious, and every filthy, book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information directly or indirectly, where, or how, or from whom, or by what means any of the hereinbefore-mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can be, used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing, is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post-office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

SEC. 212. All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, may be written or printed or otherwise impressed or apparent, are hereby declared nonmailable matter, and shall not be conveyed in the mails nor delivered from any post-office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster-General shall prescribe. Whoever shall knowingly deposit or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable matter, or shall knowingly take the same or cause the same to be taken from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

SEC. 213. No letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon

Punishment for.

Issuing unpaid-for money orders.
R. S., sec. 4030, p. 777.
Punishment for.

Obscene matter un-mailable.
Vol. 25, p. 496.
R. S., sec. 3893, p. 753.

Punishment for mailing or taking from mails to circulate.

Libelous and indecent matter on wrappers or envelopes.
Vol. 25, p. 496.

Punishment for mailing.

Lottery, gift enterprise, etc., circulars not mailable.
R. S., sec. 3894, p. 753.
Vol. 25, p. 465; Vol. 28, p. 963.

the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift enterprise, or scheme; and no newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be deposited in or carried by the mails of the United States, or be delivered by any postmaster or letter carrier. Whoever shall knowingly deposit or cause to be deposited, or shall knowingly send or cause to be sent, anything to be conveyed or delivered by mail in violation of the provisions of this section, or shall knowingly deliver or cause to be delivered by mail anything herein forbidden to be carried by mail, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years. Any person violating any provision of this section may be tried and punished either in the district in which the unlawful matter or publication was mailed, or to which it was carried by mail for delivery according to the direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed.

Punishment for.

Place of trial.

Official acting as lottery agent.
R. S., sec. 3851, p. 762.

Punishment for.

Using mails to promote frauds.
Vol. 25, p. 873.
R. S., sec. 5480, p. 1063.

Counterfeit money.

Sec. 214. Whoever, being a postmaster or other person employed in the postal service, shall act as agent for any lottery office, or under color of purchase or otherwise, vend lottery tickets, or shall knowingly send by mail or deliver any letter, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes awarded by means of any such scheme, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both.

Sec. 215. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the "saw-dust swindle," or "counterfeit-money fraud," or by dealing or pretending to deal in what is commonly called "green articles," "green coin," "green goods," "bills," "paper goods," "spurious Treasury notes," "United States goods," "green cigars," or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post-office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the



United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 216. Whoever, for the purpose of conducting, promoting, or carrying on, in any manner, by means of the post-office establishment of the United States, any scheme or device mentioned in the section last preceding, or any other unlawful business whatsoever, shall use or assume, or request to be addressed by, any fictitious, false, or assumed title, name, or address, or name other than his own proper name, or shall take or receive from any post-office of the United States, or station thereof, or any other authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be punished as provided in the section last preceding.

SEC. 217. All kinds of poison, and all articles and compositions containing poison, and all poisonous animals, insects, and reptiles, and explosives of all kinds, and inflammable materials, and infernal machines, and mechanical, chemical, or other devices or compositions which may ignite or explode, and all disease germs or scabs, and all other natural or artificial articles, compositions, or materials of whatever kind which may kill, or in any wise hurt, harm, or injure another, or damage, deface, or otherwise injure the mails or other property, whether sealed as first-class matter or not, are hereby declared to be nonmailable matter, and shall not be conveyed in the mails or delivered from any post-office or station thereof, nor by any letter carrier; but the Postmaster-General may permit the transmission in the mails, under such rules and regulations as he shall prescribe as to preparation and packing, of any articles hereinbefore described which are not outwardly or of their own force dangerous or injurious to life, health, or property: *Provided*, That all spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind, are hereby declared to be nonmailable and shall not be deposited in or carried through the mails. Whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared by this section to be nonmailable, unless in accordance with the rules and regulations hereby authorized to be prescribed by the Postmaster-General, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, anything declared by this section to be nonmailable, whether transmitted in accordance with the rules and regulations authorized to be prescribed by the Postmaster-General or not, with the design, intent, or purpose to kill, or in anywise hurt, harm, or injure another, or damage, deface, or otherwise injure the mails or other property, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 218. Whoever, with intent to defraud, shall falsely make, forge, counterfeit, engrave, or print, or cause or procure to be falsely made, forged, counterfeited, engraved, or printed, or shall willingly aid or assist in falsely making, forging, counterfeiting, engraving, or printing, any order in imitation of or purporting to be a money order

Punishment for.

Using fraudulent fictitious address.
Vol. 25, p. 473.

Punishment for.

Poisons, explosives, etc., not mailable.

Packing permitted.

Proviso.
Intoxicating liquors.

Punishment for mailing.

Mailing articles with injurious intent.

Punishment for.

Counterfeiting, etc., money orders.
Vol. 24, p. 355; Vol. 25, p. 187.
R. S., sec. 5463, p. 1039.



issued by the Post-Office Department, or by any postmaster or agent thereof; or whoever shall forge or counterfeit the signature of any postmaster, assistant postmaster, chief clerk, or clerk, upon or to any money order, or postal note, or blank therefor provided or issued by or under the direction of the Post-Office Department of the United States, or of any foreign country, and payable in the United States, or any material signature or indorsement thereon, or any material signature to any receipt or certificate of identification thereon; or shall falsely alter, or cause or procure to be falsely altered in any material respect, or knowingly aid or assist in falsely so altering any such money order or postal note; or shall, with intent to defraud, pass, utter, or publish any such forged or altered money order or postal note, knowing any material signature or indorsement thereon to be false, (forged), or counterfeited, or any material alteration therein to have been falsely made; or shall issue any money order or postal note without having previously received or paid the full amount of money payable therefor, with the purpose of fraudulently obtaining or receiving, or fraudulently enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any officer, employee, or agent thereof, any sum of money whatever; or shall, with intent to defraud the United States, or any person, transmit or present to, or cause or procure to be transmitted or presented to, any officer or employee, or at any office of the Government of the United States, any money order or postal note, knowing the same to contain any forged or counterfeited signature to the same, or to any material indorsement, receipt, or certificate thereon, or material alteration therein unlawfully made, or to have been unlawfully issued without previous payment of the amount required to be paid upon such issue, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Punishment for.

Counterfeiting, etc.,
postage stamps.
R. S., sec. 5464, p.
1039.

SEC. 219. Whoever shall forge or counterfeit any postage stamp, or any stamp printed upon any stamped envelope, or postal card, or any die, plate, or engraving therefor, or shall make or print, or knowingly use or sell, or have in possession with intent to use or sell, any such forged or counterfeited postage stamp, stamped envelope, postal card, die, plate, or engraving; or shall make, or knowingly use or sell, or have in possession with intent to use or sell, any paper bearing the watermark of any stamped envelope, or postal card, or any fraudulent imitation thereof; or shall make or print, or authorize or procure to be made or printed, any postage stamp, stamped envelope, or postal card, of the kind authorized and provided by the Post-Office Department, without the special authority and direction of said department; or shall, after such postage stamp, stamped envelope, or postal card has been printed, with intent to defraud, deliver the same to any person not authorized by an instrument in writing, duly executed under the hand of the Postmaster-General and the seal of the Post-Office Department, to receive it, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both.

Punishment for.

Counterfeiting, etc.,
foreign stamps.
R. S., sec. 5465, p.
1060.
Punishment for.

SEC. 220. Whoever shall forge, or counterfeit, or knowingly utter or use any forged or counterfeited postage stamp of any foreign government, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both.

Inclosing higher in
lower class matter.
Vol. 26, p. 2.
R. S., sec. 3887, p. 757.

SEC. 221. Matter of the second, third, or fourth class containing any writing or printing in addition to the original matter, other than as authorized by law, shall not be admitted to the mails, nor delivered, except upon payment of postage for matter of the first class, deducting therefrom any amount which may have been prepaid by stamps affixed, unless by direction of the Postmaster-General such postage shall be remitted. Whoever shall knowingly conceal or inclose any matter of a higher class in that of a lower class, and deposit or cause the same to be deposited for conveyance by mail, at

Punishment for.

a less rate than would be charged for such higher class matter, shall be fined not more than one hundred dollars.

SEC. 222. Whoever, being a postmaster, shall affix his signature to the approval of any bond of a bidder, or to the certificate of sufficiency of sureties in any contract, before the said bond or contract is signed by the bidder or contractor and his sureties, or shall knowingly, or without the exercise of due diligence, approve any bond of a bidder with insufficient sureties, or shall knowingly make any false or fraudulent certificate, shall be forthwith dismissed from office and be thereafter disqualified from holding the office of postmaster; and shall also be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

SEC. 223. Whoever shall knowingly submit or cause to be submitted to any postmaster or to the Post-Office Department or any officer of the postal service, any false evidence relative to any publication for the purpose of securing the admission thereof at the second-class rate, for transportation in the mails, shall be fined not more than five hundred dollars.

SEC. 224. Whoever shall make, allege, or present, or cause to be made, alleged, or presented, or assist, aid, or abet in making, alleging, or presenting, any claim or application for indemnity for the loss of any registered letter, parcel, package, or other article or matter, or the contents thereof, knowing such claim or application to be false, fictitious, or fraudulent; or whoever for the purpose of obtaining or aiding to obtain the payment or approval of any such claim or application, shall make or use, or cause to be made or used, any false statement, certificate, affidavit, or deposition; or whoever shall knowingly and willfully misrepresent, or misstate, or, for the purpose aforesaid shall knowingly and willfully conceal any material fact or circumstance in respect of any such claim or application for indemnity, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

SEC. 225. Whoever, being a postmaster or other person employed in or connected with any branch of the postal service, shall loan, use, pledge, hypothecate, or convert to his own use, or shall deposit in any bank, or exchange for other funds or property, except as authorized by law, any money or property coming into his hands or under his control in any manner whatever, in the execution or under color of his office, employment, or service, whether the same shall be the money or property of the United States or not; or shall fail or refuse to remit to or deposit in the Treasury of the United States or in a designated depository, or to account for or turn over to the proper officer or agent, any such money or property, when required so to do by law or the regulations of the Post-Office Department, or upon demand or order of the Postmaster-General, either directly or through a duly authorized officer or agent, shall be deemed guilty of embezzlement; and every such person, as well as every other person advising or knowingly participating therein, shall be fined in a sum equal to the amount or value of the money or property embezzled, or imprisoned not more than ten years, or both. Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be prima facie evidence of such embezzlement; and upon the trial of any indictment against any person for such embezzlement, it shall be prima facie evidence of a balance against him to produce a transcript from the account books of the Auditor for the Post-Office Department. But nothing herein shall be construed to prohibit any postmaster depositing, under the direction of the Postmaster-General, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as postmaster, any funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or

Postmaster illegally approving bond, etc.
R. S., sec. 3947, p. 765.
Vol. 18, p. 233.

Punishment for.

Submitting false evidence as to second-class matter.
Vol. 33, p. 823.

Punishment for.

Inducing or prosecuting claims for losses.

Punishment for.

Misappropriating postal funds or property.
R. S., secs. 4046, 4053, pp. 779, 781.

Punishment for.

Prima facie evidence.

Deposits, etc., permitted.



Employees interest- ed in mail contracts. R. S., sec. 412, p. 68.	otherwise, when instructed or required so to do by the Postmaster-General, for the purpose of remitting surplus funds from one post-office to another.
Punishment for.	SEC. 226. Whoever, being a person employed in the postal service, shall become interested in any contract for carrying the mail, or act as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Department, shall be immediately dismissed from office, and shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.
Fraudulent use of official envelopes. Vol. 19, p. 335.	SEC. 227. Whoever shall make use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined not more than three hundred dollars.
Penalty.	SEC. 228. Whoever shall place or cause to be placed any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mail, with intent to cause an increase in the compensation of the railroad mail carrier over whose route such mail may pass, shall be fined not more than twenty thousand dollars, or imprisoned not more than five years, or both.
Fraudulently in- creasing weight of mail. Vol. 30, p. 442.	SEC. 229. Every foreign mail shall, while being transported across the territory of the United States under authority of law, be taken and deemed to be a mail of the United States so far as to make any violation thereof, or depredation thereon, or offense in respect thereto, or any part thereof, an offense of the same grade, and punishable in the same manner and to the same extent as though the mail was a mail of the United States; and in any indictment or information for any such offense, the mail, or any part thereof, may be alleged to be, and on the trial of any such indictment or information it shall be deemed and held to be, a mail or part of a mail of the United States.
Punishment for.	SEC. 230. Every person employed in the postal service shall be subject to all penalties and forfeitures for the violation of the laws relating to such service, whether he has taken the oath of office or not.
Offenses against for- eign mail in transit. R. S., sec. 4013, p. 774.	SEC. 231. The words "postal service," wherever used in this chapter, shall be held and deemed to include the "Post-Office Department."
Punishment for.	
Indictments.	
Omission to take oath. R. S., sec. 3832, p. 750.	
Definition.	

CHAPTER NINE.

Offenses against for-
eign and interstate
commerce.

OFFENSES AGAINST FOREIGN AND INTERSTATE COMMERCE.

Sec.	Sec.
232. Dynamite, etc., not to be carried on vessels or vehicles carrying passengers for hire.	239. Common carrier, etc., not to collect purchase price of interstate shipment of intoxicating liquors.
233. Interstate Commerce Commission to make regulations for transportation of explosives.	240. Packages containing intoxicating liquors shipped in interstate commerce to be marked as such.
234. Liquid nitroglycerine, etc., not to be carried on certain vessels and vehicles.	241. Importation of certain wild animals and birds forbidden.
235. Marking of packages of explosives; deceptive marking.	242. Transportation of prohibited animals.
236. Death or bodily injury caused by such transportation.	243. Marking of packages.
237. Importation and transportation of lottery tickets, etc., forbidden.	244. Penalty for violation of three preceding sections.
238. Interstate shipment of intoxicating liquors; delivery of to be made only to bona fide consignee.	245. Importation and transportation of obscene, etc., books, etc.

Explosives carried
on vessels or vehicles
with passengers for
hire forbidden.
R. S., sec. 5353, p.
1039.

SEC. 232. It shall be unlawful to transport, carry, or convey, any dynamite, gunpowder, or other explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in any State, Territory, or District of the

United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire: *Provided*, That it shall be lawful to transport on any such vessel or vehicle small arms ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time in a single vessel or vehicle; but such samples shall not be carried in that part of a vessel or vehicle which is intended for the transportation of passengers for hire: *Provided further*, That nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels or vehicles.

SEC. 233. The Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives, which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land. Said commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regulations, made desirable by new information or altered conditions. Such regulations shall be in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport. Such regulations, as well as all changes or modifications thereof, shall take effect ninety days after their formulation and publication by said commission and shall be in effect until reversed, set aside, or modified.

SEC. 234. It shall be unlawful to transport, carry, or convey, liquid nitroglycerin, fulminate in bulk in dry condition, or other like explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water.

SEC. 235. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof; and it shall be unlawful for any person to deliver, or cause to be delivered, to any common carrier engaged in interstate or foreign commerce by land or water, for interstate or foreign transportation, or to carry upon any vessel or vehicle engaged in interstate or foreign transportation, any explosive, or other dangerous article, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery or carriage is made. Whoever shall knowingly violate, or cause to be violated, any provision of this section, or of the three sections last preceding, or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both.

Public Laws, 1st sess.,
p. 554.

Provides,
Explosives permit-
ted.

Restriction.
Military transporta-
tion.

Regulations for
transporting explo-
sives to be made by
Interstate Commerce
Commission.
Public Laws, 1st sess.,
p. 555.

Effect.

High explosives ex-
cluded from certain
vessels or vehicles.
Public Laws, 1st
sess., p. 555.

Marking packages
of explosives.
Public Laws, 1st
sess., p. 555.
R. S., sec. 5355, p.
1040.

Punishment for vio-
lation.



Causing death or injury by illegal transportation.
R. S., sec. 5354, p. 1039.

Punishment for.
Importing, etc., lottery tickets, etc.
Vol. 28, p. 963.

Interstate, etc., carriage.

Punishment for.

Intoxicating liquors by interstate, etc., shipment delivered to other than bona fide consignee.

Punishment for.

Carrier, etc., collecting purchase price of interstate, etc., shipment of intoxicating liquor.

SEC. 236. When the death or bodily injury of any person is caused by the explosion of any article named in the four sections last preceding, while the same is being placed upon any vessel or vehicle to be transported in violation thereof, or while the same is being so transported, or while the same is being removed from such vessel or vehicle, the person knowingly placing, or aiding or permitting the placing, of such articles upon any such vessel or vehicle, to be so transported, shall be imprisoned not more than ten years.

SEC. 237. Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, for the purpose of disposing of the same, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier for carriage, or shall carry, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon, the event of any such lottery, gift enterprise, or similar scheme, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme, or shall knowingly take or receive, or cause to be taken or received, any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall, for the first offense, be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than two years.

SEC. 238. Any officer, agent, or employee of any railroad company, express company, or other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind which has been shipped from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SEC. 239. Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part



thereof, before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars.

Penalty.

SEC. 240. Whoever shall knowingly ship or cause to be shipped, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, any package of or package containing any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than five thousand dollars; and such liquor shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

Shipping packages of intoxicating liquors in interstate, etc., commerce, not plainly marked.

Penalty.

SEC. 241. The importation into the United States, or any Territory or District thereof, of the mongoose, the so-called "flying foxes" or fruit bats, the English sparrow, the starling, and such other birds and animals as the Secretary of Agriculture may from time to time declare to be injurious to the interests of agriculture or horticulture, is hereby prohibited; and all such birds and animals shall, upon arrival at any port of the United States, be destroyed or returned at the expense of the owner. No person shall import into the United States or into any Territory or District thereof, any foreign wild animal or bird, except under special permit from the Secretary of Agriculture: *Provided*, That nothing in this section shall restrict the importation of natural history specimens for museums or scientific collections, or of certain cage birds, such as domesticated canaries, parrots, or such other birds as the Secretary of Agriculture may designate. The Secretary of the Treasury is hereby authorized to make regulations for carrying into effect the provisions of this section.

Importing certain injurious birds and animals forbidden. Vol. 31, p. 188.

Permits for foreign wild animals.

Proviso. Specimens for museums, etc.

SEC. 242. It shall be unlawful for any person to deliver to any common carrier for transportation, or for any common carrier to transport from any State, Territory, or District of the United States, to any other State, Territory, or District thereof, any foreign animals or birds, the importation of which is prohibited, or the dead bodies or parts thereof of any wild animals or birds, where such animals or birds have been killed or shipped in violation of the laws of the State, Territory, or District in which the same were killed, or from which they were shipped: *Provided*, That nothing herein shall prevent the transportation of any dead birds or animals killed during the season when the same may be lawfully captured, and the export of which is not prohibited by law in the State, Territory, or District in which the same are captured or killed: *Provided further*, That nothing herein shall prevent the importation, transportation, or sale of birds or bird plumage manufactured from the feathers of barnyard fowls.

Transportation of illegally killed game, etc., prohibited. Vol. 31, p. 188.

Proviso. Shipments in game season.

Feathers of barnyard fowls.

SEC. 243. All packages containing the dead bodies, or the plumage, or parts thereof, of game animals, or game or other wild birds, when shipped in interstate or foreign commerce, shall be plainly and clearly marked, so that the name and address of the shipper, and the nature of the contents, may be readily ascertained on an inspection of the outside of such package.

Marking of packages. Vol. 31, p. 188.



Penalty for viola-
tions.
Vol. 31, p. 188.

SEC. 244. For each evasion or violation of any provision of the three sections last preceding, the shipper shall be fined not more than two hundred dollars; the consignee knowingly receiving such articles so shipped and transported in violation of said sections shall be fined not more than two hundred dollars; and the carrier knowingly carrying or transporting the same in violation of said sections shall be fined not more than two hundred dollars.

Importing and trans-
porting obscene
books, etc.
Vol. 33, p. 705; Vol.
29, p. 512.

SEC. 245. Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier, for carriage from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any obscene, lewd, or lascivious, or any filthy, book, pamphlet, picture, paper, letter, writing, print, or other matter of indecent character, or any drug, medicine, article, or thing designed, adapted, or intended for preventing conception, or producing abortion, or for any indecent or immoral use, or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of the hereinbefore-mentioned articles, matters, or things may be obtained or made; or whoever shall knowingly take or cause to be taken from such express company or other common carrier any matter or thing the depositing of which for carriage is herein made unlawful, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Punishment for.

CHAPTER TEN.

Slave trade and
conage.

THE SLAVE TRADE AND PEONAGE.

- Sec.
246. Confining or detaining slaves on board vessel.
247. Seizing slaves on foreign shores.
248. Bringing slaves into the United States.
249. Equipping vessels for slave trade.
250. Transporting persons to be held as slaves.
251. Hovering on coast with slaves on board.
252. Serving in vessels engaged in the slave trade.
253. Receiving or carrying away any person to be sold or held as a slave.
254. Equipping, etc., vessel for slave trade.
255. Penalty on persons building, equipping, etc.
256. Forfeiture of vessel transporting slaves.
257. Receiving persons on board to be sold as slaves.
258. Vessels found hovering on coast.

- Sec.
259. Forfeiture of interest in vessels transporting slaves.
260. Seizure of vessels engaged in the slave trade.
261. Proceeds of condemned vessels, how distributed.
262. Disposal of persons found on board seized vessel.
263. Apprehension of officers and crew.
264. Removal of persons delivered from seized vessels.
265. To what port captured vessels sent.
266. When owners of foreign vessels shall give bond.
267. Instructions to commanders of armed vessels.
268. Kidnaping.
269. Holding or returning persons to peonage.
270. Obstructing enforcement of preceding section.
271. Bringing kidnaped persons into United States.

Confining or detain-
ing slaves on board
vessel.
R. S., sec. 5375, p.
1042.

SEC. 246. Whoever, being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned wholly or in part, or navigated for or in behalf of any citizen of the United States, forcibly confines or



detains on board such vessel any person as a slave, or, on board such vessel, offers or attempts to sell as a slave any such person, or on the high seas, or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from on board such vessel any person with intent to make sale of, or having previously sold such person as a slave, is a pirate, and shall be imprisoned for life.

SEC. 247. Whoever, being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned in whole or in part, or navigated for, or in behalf of, any citizen of the United States, lands from such vessel, and, on any foreign shore, seizes any person with intent to make such person a slave, or decoys, or forcibly brings, or carries or receives such person on board such vessel, with like intent, is a pirate, and shall be imprisoned for life.

SEC. 248. Whoever brings within the jurisdiction of the United States, in any manner whatsoever, any person from any foreign kingdom or country, or from sea, or holds, sells, or otherwise disposes of, any person so brought in, as a slave, or to be held to service or labor, shall be fined not more than ten thousand dollars, one half to the use of the United States and the other half to the use of the party who prosecutes the indictment to effect; and, moreover, shall be imprisoned not more than seven years.

SEC. 249. Whoever builds, fits out, equips, loads, or otherwise prepares, or sends away, either as master, factor, or owner, any vessel, in any port or place within the jurisdiction of the United States, or causes such vessel to sail from any port or place whatsoever, within such jurisdiction, for the purpose of procuring any person from any foreign kingdom or country to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined not more than five thousand dollars, one half to the use of the United States and the other half to the use of the person prosecuting the indictment to effect; and shall, moreover, be imprisoned not more than seven years.

SEC. 250. Whoever, within the jurisdiction of the United States, takes on board, receives, or transports from any foreign kingdom or country, or from sea, any person in any vessel, for the purpose of holding, selling, or otherwise disposing of such person as a slave, or to be held to service or labor, shall be punished as prescribed in the section last preceding.

SEC. 251. Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas, within the jurisdiction of the United States, or hovering on the coast thereof, having on board any person, for the purpose of selling such person as a slave, or with intent to land such person for any such purpose, shall be fined not more than ten thousand dollars and imprisoned not more than four years.

SEC. 252. Whoever, being a citizen of the United States, or other person residing therein, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign country or place to another, shall be fined not more than two thousand dollars and imprisoned not more than two years.

SEC. 253. Whoever, being the master or owner or person having charge of any vessel, receives on board any other person, with the knowledge or intent that such person is to be carried from any place subject to the jurisdiction of the United States to any other place, to be held or sold as a slave, or carries away from any place subject to the jurisdiction of the United States any such person, with the intent that he may be so held or sold as a slave, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Punishment for.

Seizing slaves on foreign shores.
R. S., sec. 5376, p. 1042.

Punishment for.

Bringing slaves into United States.
R. S., sec. 5377, p. 1043.

Punishment for.

Equipping vessels for slave trade.
R. S., sec. 5378, p. 1043.

Punishment for.

Transporting persons to be held as slaves.
R. S., sec. 5379, p. 1043.

Punishment for.

Hovering on coast with slaves on board.
R. S., sec. 5380, p. 1043.

Punishment for.

Serving on vessels in slave trade.
R. S., sec. 5381, p. 1043.

Punishment for.

Receiving or carrying away person to be sold or held as slave.
R. S., sec. 5321, p. 1071.

Punishment for.



Equipping, etc., ves-
sel for slave trade.
R. S., sec. 5551, p.
1076.

SEC. 254. No person shall, for himself or for another, as master, factor, or owner, build, fit, equip, load, or otherwise prepare any vessel in any port or place within the jurisdiction of the United States, or cause any vessel to sail from any port or place within the jurisdiction of the United States for the purpose of procuring any person from any foreign kingdom, place, or country to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of, as a slave, or to be held to service or labor; and every vessel so built, fitted out, equipped, laden, or otherwise prepared, with her tackle, apparel, furniture, and lading, shall be forfeited; one moiety to the use of the United States and the other to the use of the person who sues for the forfeiture and prosecutes the same to effect.

Forfeiture.

Moiety to informer.

Penalty on persons
building, equipping,
etc.
R. S., sec. 5552, p.
1076.

SEC. 255. Whoever so builds, fits out, equips, loads, or otherwise prepares or sends away any vessel, knowing or intending that the same shall be employed in such trade or business, contrary to the provisions of the section last preceding, or in any way aids or abets therein; shall, besides the forfeiture of the vessel, pay the sum of two thousand dollars; one moiety thereof to the use of the United States and the other moiety thereof to the use of the person who sues for and prosecutes the same to effect.

Moiety to informer.

Forfeiture of vessels
transporting slaves.
R. S., sec. 5553, p.
1076.

SEC. 256. Every vessel employed in carrying on the slave trade or on which is received or transported any person from any foreign kingdom or country, or from sea, for the purpose of holding, selling, or otherwise disposing of such person as a slave, or of holding such person to service or labor, shall, together with her tackle, apparel, furniture, and the goods and effects which may be found on board, or which may have been imported thereon in the same voyage, be forfeited; one moiety to the use of the United States and the other to the use of the person who sues for and prosecutes the forfeiture to effect.

Moiety to informer.

Receiving persons
on board to be sold as
slaves.
R. S., sec. 5554, p.
1076.

SEC. 257. Whoever, being a citizen of the United States, takes on board, receives, or transports any person for the purpose of selling such person as a slave shall, in addition to the forfeiture of the vessel, pay for each person so received on board or transported the sum of two hundred dollars, to be recovered in any court of the United States; the one moiety thereof to the use of the United States and the other moiety to the use of the person who sues for and prosecutes the same to effect.

Penalty.

Moiety to informer.

Vessels found hov-
ering on coasts to be
forfeited.
R. S., sec. 5555, p.
1076.

SEC. 258. Every vessel which is found in any river, port, bay, or harbor, or on the high seas, within the jurisdiction of the United States, or hovering on the coasts thereof, and having on board any person, with intent to sell such person as a slave, or with intent to land the same for that purpose, either in the United States or elsewhere, shall, together with her tackle, apparel, furniture, and the goods or effects on board of her, be forfeited to the United States.

Forfeiture of inter-
est in slave vessels.
R. S., sec. 5556, p.
1077.

SEC. 259. It shall be unlawful for any citizen of the United States, or other person residing therein, or under the jurisdiction thereof, directly or indirectly to hold or have any right or property in any vessel employed or made use of in the transportation or carrying of slaves from one foreign country or place to another, and any such right or property shall be forfeited, and may be libeled and condemned for the use of the person suing for the same. Whoever shall violate the prohibition of this section shall also forfeit and pay a sum of money equal to double the value of his right or property in such vessel; and shall also forfeit a sum of money equal to double the value of the interest he had in the slaves which at any time may be transported or carried in such vessels.

Additional penalty.

Seizure of vessels in
slave trade.
R. S., sec. 5557, p.
1077.

SEC. 260. The President is authorized, when he deems it expedient, to man and employ any of the armed vessels of the United States to cruise wherever he may judge attempts are making to carry on the slave trade, by citizens or residents of the United States, in contra-



vention of laws prohibitory of the same; and, in such case, he shall instruct the commanders of such armed vessels to seize, take, and bring into any port of the United States, to be proceeded against according to law, all American vessels, wheresoever found, which may have on board, or which may be intended for the purpose of taking on board, or of transporting, or may have transported any person, in violation of the provisions of any Act of Congress prohibiting the traffic in slaves.

SEC. 261. The proceeds of all vessels, their tackle, apparel, and furniture, and the goods and effects on board of them, which are so seized, prosecuted, and condemned, shall be paid into the Treasury of the United States.

SEC. 262. The officers of the vessel making such seizure shall safely keep every person found on board of any vessel so seized, taken, or brought into port for condemnation, and shall deliver every such person to the marshal of the district into which he may be brought, if into a port of the United States, or if elsewhere, to such person as may be lawfully appointed by the President, in the manner directed by law, transmitting to the President, as soon as may be after such delivery, a descriptive list of such persons, in order that he may give directions for the disposal of them.

SEC. 263. The commanders of such commissioned vessels shall cause to be apprehended and taken into custody every person found on board of such offending vessel so seized and taken, being of the officers or crew thereof, and him convey, as soon as conveniently may be, to the civil authority of the United States, to be proceeded against in due course of law.

SEC. 264. The President is authorized to make such regulations and arrangements as he may deem expedient for the safe-keeping, support, and removal beyond the limits of the United States of all such persons as may be so delivered and brought within its jurisdiction.

SEC. 265. It shall be the duty of the commander of any armed vessel of the United States, whenever he makes any capture under the preceding provisions, to bring the vessel and her cargo, for adjudication, into some port of the State, Territory, or District to which such vessel so captured may belong, if he can ascertain the same; if not, then into any convenient port of the United States.

SEC. 266. Every owner, master, or factor of any foreign vessel clearing from any port within the jurisdiction of the United States, and suspected to be intended for the slave trade, and the suspicion being declared to the officer of the customs by any citizen, on oath; and such information being to the satisfaction of the officer, shall first give bond, with sufficient sureties, to the Treasurer of the United States that none of the natives of any foreign country or place shall be taken on board such vessel to be transported or sold as slaves in any other foreign port or place whatever, within nine months thereafter.

SEC. 267. The President is authorized to issue instructions to the commanders of the armed vessels of the United States, directing them, whenever it is practicable, and under such rules and regulations as he may prescribe, to proceed directly to the country from which they were taken, and there hand over to the agent of the United States all such persons, delivered from on board vessels seized in the prosecution of the slave trade; and they shall afterwards bring the captured vessels and persons engaged in prosecuting such trade to the United States for trial and adjudication.

SEC. 268. Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or who entices, persuades, or induces any other

Proceeds of condemned vessels paid into the Treasury.
R. S., sec. 5558, p. 1077.

Disposal of persons found on seized vessel.
R. S., sec. 5559, p. 1077.

Apprehension of officers and crew.
R. S., sec. 5560, p. 1077.

Removal of persons delivered from seized vessel.
R. S., sec. 5561, p. 1077.

To what port captured vessel sent.
R. S., sec. 5563, p. 1078.

When owners of foreign vessels shall give bond.
R. S., sec. 5564, p. 1078.

Instructions to masters of armed vessels.
R. S., sec. 5567, p. 1078.

Kidnaping.
R. S., sec. 5525, p. 1071.



person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held; or who in any way knowingly aids in causing any other person to be held, sold, or carried away to be held or sold as a slave, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Punishment for. **SEC. 269.** Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Holding or returning persons to peonage. **SEC. 270.** Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of the section last preceding, shall be liable to the penalties therein prescribed.

R. S., sec. 5526, p. 1071. **SEC. 271.** Whoever shall knowingly and willfully bring into the United States or any place subject to the jurisdiction thereof, any person inveigled or forcibly kidnaped in any other country, with intent to hold such person so inveigled or kidnaped in confinement or to any involuntary servitude; or whoever shall knowingly and willfully sell, or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever; or whoever shall knowingly and willfully hold to involuntary servitude any person so brought or sold, shall be fined not more than five thousand dollars and imprisoned not more than five years.

Punishment for.

Obstructing enforcement of preceding section.

R. S., sec. 5527, p. 1071.

Bringing kidnaped person into United States, etc.

Vol. 18, p. 261.

CHAPTER ELEVEN.

OFFENSES WITHIN THE ADMIRALTY AND MARITIME AND THE TERRITORIAL JURISDICTION OF THE UNITED STATES.

<p>Offenses within admiralty, maritime, and territorial jurisdiction of the United States.</p> <p>Sec.</p> <p>272. Places within or waters upon which sections of this chapter shall apply.</p> <p>273. Murder.</p> <p>274. Manslaughter.</p> <p>275. Punishment for murder; for manslaughter.</p> <p>276. Assault with intent to commit murder, rape, robbery, etc.</p> <p>277. Attempt to commit murder or manslaughter.</p> <p>278. Rape.</p> <p>279. Having carnal knowledge of female under sixteen.</p> <p>280. Seduction of female passenger on vessel.</p>	<p>Sec.</p> <p>281. Payment of fine to female seduced; evidence required; limitation on indictment.</p> <p>282. Loss of life by misconduct of officers, etc., of vessels.</p> <p>283. Maiming.</p> <p>284. Robbery.</p> <p>285. Arson of dwelling house.</p> <p>286. Arson of other buildings, etc.</p> <p>287. Larceny.</p> <p>288. Receiving, etc., stolen goods.</p> <p>289. Laws of States adopted for punishing wrongful acts, etc.</p>
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Places and waters applicable.

On board American ship on high seas, etc.

R. S., sec. 5389, p. 1038.

On board American vessel on Great Lakes, etc.

Vol. 26, p. 424.

SEC. 272. The crimes and offenses defined in this chapter shall be punished as herein prescribed:

First. When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof.

Second. When committed upon any vessel registered, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, namely: Lake Superior, Lake Michigan, Lake Huron, Lake Saint Clair, Lake Erie, Lake Ontario, or any of the waters connecting any of said lakes, or upon the River Saint Lawrence where the same constitutes the International boundary line.



Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dock-yard, or other needful building.

Fourth. On any island, rock, or key, containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.

SEC. 273. Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree.

SEC. 274. Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

First. Voluntary—Upon a sudden quarrel or heat of passion.

Second. Involuntary—In the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

SEC. 275. Every person guilty of murder in the first degree shall suffer death. Every person guilty of murder in the second degree shall be imprisoned not less than ten years and may be imprisoned for life. Every person guilty of voluntary manslaughter shall be imprisoned not more than ten years. Every person guilty of involuntary manslaughter shall be imprisoned not more than three years, or fined not exceeding one thousand dollars, or both.

SEC. 276. Whoever shall assault another with intent to commit murder, or rape, shall be imprisoned not more than twenty years. Whoever shall assault another with intent to commit any felony, except murder, or rape, shall be fined not more than three thousand dollars, or imprisoned not more than ten years, or both. Whoever, with intent to do bodily harm, and without just cause or excuse, shall assault another with a dangerous weapon, instrument, or other thing, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. Whoever shall unlawfully strike, beat, or wound another, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. Whoever shall unlawfully assault another, shall be fined not more than three hundred dollars, or imprisoned not more than three months, or both.

SEC. 277. Whoever shall attempt to commit murder or manslaughter, except as provided in the preceding section, shall be fined not more than one thousand dollars and imprisoned not more than three years.

SEC. 278. Whoever shall commit the crime of rape shall suffer death.

SEC. 279. Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years.

SEC. 280. Every master, officer, seaman, or other person employed on board of any American vessel who, during the voyage, under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents, seduces and has illicit

On land under exclusive control of United States.

Guano Islands.

Murder defined.
First degree.

Second degree.

Manslaughter defined.
R. S., sec. 5341, p. 1038.

Voluntary.
Involuntary.

Punishment.
Murder.
R. S., sec. 5339, p. 1038.

Manslaughter.
R. S., sec. 5343, p. 1038.

Felonious assaults.
To murder or rape.
R. S., sec. 5346, p. 1038.

Other felony.

With weapons, etc.

Beating, etc.

Simple assault.

Other attempts at murder, etc.
R. S., sec. 5342, p. 1038.

Rape.
R. S., sec. 5345, p. 1038.

Having carnal knowledge of female under sixteen.
Vol. 25, p. 658.

Seduction of female passenger on vessel.
R. S., sec. 5348, p. 1039.



- Punishment for. connection with any female passenger, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; but subsequent intermarriage of the parties may be pleaded in bar of conviction.
- Disposal of fine. R. S., sec. 5350, p. 1039. SEC. 281. When a person is convicted of a violation of the section last preceding, the court may, in its discretion, direct that the amount of the fine, when paid, be paid for the use of the female seduced, or her child, if she have any; but no conviction shall be had on the testimony of the female seduced, without other evidence, nor unless the indictment is found within one year after the arrival of the vessel on which the offense was committed at the port of its destination.
- Evidence, etc., required. R. S., sec. 5351, p. 1039. SEC. 282. Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both: *Provided*, That when the owner or charterer of any steamboat or vessel shall be a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.
- Loss of life by misconduct of officers, etc., of vessels. Vol. 33, p. 1025. R. S., sec. 5344, p. 1038. SEC. 283. Whoever, with intent to maim or disfigure, shall cut, bite, or slit, the nose, ear, or lip, or cut out or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person; or whoever, with like intent, shall throw or pour upon another person, any scalding hot water, vitriol, or other corrosive acid, or caustic substance whatever, shall be fined not more than one thousand dollars, or imprisoned not more than seven years, or both.
- Punishment for. SEC. 284. Whoever, by force and violence, or by putting in fear, shall feloniously take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years.
- Maiming, etc. R. S., sec. 5348, p. 1039. SEC. 285. Whoever shall willfully and maliciously set fire to, burn, or attempt to burn, or by means of a dangerous explosive destroy or attempt to destroy, any dwelling house, or any store, barn, stable, or other building, parcel of a dwelling house, shall be imprisoned not more than twenty years.
- Punishment for. SEC. 286. Whoever shall maliciously set fire to, burn, or attempt to burn, or by any means destroy or injure, or attempt to destroy or injure, any arsenal, armory, magazine, ropewalk, ship house, warehouse, blockhouse, or barrack, or any storehouse, barn, or stable, not parcel of a dwelling house, or any other building not mentioned in the section last preceding, or any vessel built, building, or undergoing repair, or any light-house, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing, or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval, or victualing stores, arms, or other munitions of war, shall be fined not more than five thousand dollars and imprisoned not more than twenty years.
- Robbery. SEC. 287. Whoever shall take and carry away, with intent to steal or purloin, any personal property of another, shall be punished as follows: If the property taken is of a value exceeding fifty dollars, or is taken from the person of another, by a fine of not more than ten thousand dollars, or imprisonment for not more than ten years, or both;
- Punishment for. Arson of dwelling house. R. S., sec. 5385, p. 1044. Punishment for. Arson of other buildings, etc. R. S., secs. 5386, 5387, p. 1044. Punishment for. Larceny. R. S., sec. 5356, p. 1040. Punishment for.



in all other cases, by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or both. If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, shall be deemed to be the value of the property stolen.

SEC. 288. Whoever shall buy, receive, or conceal, any money, goods, bank notes, or other thing which may be the subject of larceny, which has been feloniously taken, stolen, or embezzled, from any other person, knowing the same to have been so taken, stolen, or embezzled, shall be fined not more than one thousand dollars and imprisoned not more than three years; and such person may be tried either before or after the conviction of the principal offender.

SEC. 289. Whoever, within the territorial limits of any State, organized Territory, or District, but within or upon any of the places now existing or hereafter reserved or acquired, described in section two hundred and seventy-two of this Act, shall do or omit the doing of any act or thing which is not made penal by any law of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or District in which such place is situated, by the laws thereof now in force would be penal, shall be deemed guilty of a like offense and be subject to a like punishment; and every such State, Territorial, or District law shall, for the purposes of this section, continue in force, notwithstanding any subsequent repeal or amendment thereof by any such State, Territory, or District.

CHAPTER TWELVE.

PIRACY AND OTHER OFFENSES UPON THE SEAS.

Sec.	Sec.
290. Piracy under the law of nations.	302. Robbery on shore by crew of piratical vessel.
291. Maltreatment of crew by officers of vessel.	303. Arming vessel to cruise against citizens of the United States.
292. Inciting revolt or mutiny on shipboard.	304. Piracy under color of a foreign commission.
293. Revolt and mutiny on shipboard.	305. Piracy by subjects or citizens of a foreign state.
294. Seaman laying violent hands on his commander.	306. Running away with or yielding up vessel or cargo.
295. Abandonment of mariners in foreign ports.	307. Confederating, etc., with pirates.
296. Conspiracy to cast away vessel.	308. Sale of arms and intoxicants forbidden in Pacific islands.
297. Plundering vessel in distress, etc.	309. Offenses under preceding section deemed on high seas.
298. Attacking vessel with intent to plunder.	310. "Vessels of the United States" defined.
299. Breaking and entering vessel, etc.	
300. Owner destroying vessel at sea.	
301. Other person destroying or attempting to destroy vessel at sea.	

SEC. 290. Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

SEC. 291. Whoever, being the master or officer of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, beats, wounds, or without justifiable cause, imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, or inflicts upon them any cruel and unusual punishment, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. Nothing herein contained shall be construed to repeal or modify section forty-six hundred and eleven of the Revised Statutes.

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Determining value of written instrument.

Receiving stolen goods, etc.
R. S., sec. 5357, p. 1040.

Punishment for Trials.

Laws of States adopted for punishing wrongful acts, etc.
R. S., sec. 5391, p. 1045.
Vol. 30, p. 717.
Ank., p. 1142.

Effect of repeal, etc.

Piracy and other offenses upon the seas.

Piracy.
R. S., sec. 5368, p. 1042.

Punishment for.

Maltreatment of crew by officers of vessel.
Vol. 29, p. 691.
R. S., sec. 5347, p. 1039.

Punishment for:

Flogging.
R. S., sec. 4611, p. 894.

Inciting revolt or
mutiny on shipboard.
R. S., sec. 5359, p.
1040.

SEC. 292. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

Punishment for.

Revolt or mutiny on
shipboard.
R. S., sec. 5360, p.
1040.

SEC. 293. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than two thousand dollars and imprisoned not more than ten years.

Punishment for.

Seaman laying vio-
lent hands on com-
mander.
R. S., sec. 5369, p.
1040.
Punishment for.

SEC. 294. Whoever, being a seaman, lays violent hands upon his commander, thereby to hinder and prevent his fighting in defense of his vessel or the goods intrusted to him, is a pirate, and shall be imprisoned for life.

Abandonment of
mariner in foreign
port.
R. S., sec. 5363, p.
1041.

SEC. 295. Whoever, being master or commander of a vessel of the United States, while abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Punishment for.

Conspiracy to cast
away vessel.
R. S., sec. 5364, p.
1041.

SEC. 296. Whoever, on the high seas, or within the United States, willfully and corruptly conspires, combines, and confederates with any other person, such other person being either within or without the United States, to cast away or otherwise destroy any vessel, with intent to injure any person that may have underwritten or may thereafter underwrite any policy of insurance thereon or on goods on board thereof, or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel on bottomry or respondentia; or whoever, within the United States, builds, or fits out, or aids in building or fitting out, any vessel with intent that the same be cast away or destroyed, with the intent hereinbefore mentioned, shall be fined not more than ten thousand dollars and imprisoned not more than ten years.

Punishment for.

Plundering vessel in
distress, etc.
R. S., sec. 5358, p.
1040.

SEC. 297. Whoever plunders, steals, or destroys any money, goods, merchandise, or other effects, from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States, shall be fined not more than five thousand dollars and imprisoned not more than ten years; and whoever willfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; or whoever holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel sailing upon the sea into danger, or distress, or shipwreck, shall be imprisoned not less than ten years and may be imprisoned for life.

Punishment for.

Obstructing escape
of wrecked person.

Holding false light.

Punishment for.



SEC. 298. Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, by surprise or by open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

Attacking vessel with intent to plunder.
R. S., sec. 5361, p. 1041.

Punishment for.

SEC. 299. Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, breaks or enters any vessel, with intent to commit any felony, or maliciously cuts, spoils, or destroys any cordage, cable, buoys, buoy-rope, head-fast, or other fast, fixed to the anchor or moorings belonging to any vessel, shall be fined not more than one thousand dollars and imprisoned not more than five years.

Breaking and entering vessel, etc.
R. S., sec. 5362, p. 1041.

Punishment for.

SEC. 300. Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel, of which he is owner, in whole or in part, with intent to prejudice any person that may underwrite any policy of insurance thereon, or any merchant that may have goods thereon, or any other owner of such vessel, shall be imprisoned for life or for any term of years.

Owner destroying vessel at sea.
Vol. 28, p. 233.
R. S., sec. 5365, p. 1041.

Punishment for.

SEC. 301. Whoever, not being an owner, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel of the United States to which he belongs, or, willfully, with intent to destroy the same, sets fire to any such vessel, or otherwise attempts the destruction thereof, shall be imprisoned not more than ten years.

Other person destroying, or attempting, of vessel at sea.
Vol. 28, p. 233.
R. S., sec. 5366, 5367, p. 1041.

Punishment for.

SEC. 302. Whoever, being engaged in any piratical cruise, or enterprise, or being of the crew of any piratical vessel, lands from such vessel, and on shore commits robbery, is a pirate, and shall be imprisoned for life.

Robbery on shore by piratical crew.
R. S., sec. 5371, p. 1042.

Punishment for.

SEC. 303. Whoever, being a citizen of the United States, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming, any private vessel of war or privateer, with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States, or their property, or whoever takes the command of or enters on board of any such vessel, for such intent, or who purchases any interest in any such vessel with a view to share in the profits thereof, shall be fined not more than ten thousand dollars and imprisoned not more than ten years. The trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Arming vessel to cruise against citizens.
R. S., sec. 5284, p. 1024.

Punishment for.

Trials.

SEC. 304. Whoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person, is, notwithstanding the pretense of such authority, a pirate, and shall be imprisoned for life.

Piracy under color of foreign commission.
R. S., sec. 5373, p. 1042.

Punishment for.

SEC. 305. Whoever, being a citizen or subject of any foreign state, is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is guilty of piracy, and shall be imprisoned for life.

Piracy by aliens.
R. S., sec. 5374, p. 1042.

Punishment for.



Running away with
or yielding up vessel
or cargo.
R. S., sec. 5383, p.
1043.

Punishment for.

Confederating, etc.,
with pirates.
R. S., sec. 5384, p.
1043.

Confining master.
Punishment for.

Selling arms, intox-
icants, etc., in Pacific
islands.
Vol. 32, p. 33.

Punishment for.

Medicinal use of
spirits, etc.

Offenses deemed on
high seas.

"Vessels of the
United States" de-
fined.

Offenses in the Ter-
ritories.

Places applicable.

SEC. 306. Whoever, being a captain or other officer or mariner of a vessel upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of fifty dollars, or who yields up such vessel voluntarily to any pirate, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

SEC. 307. Whoever attempts or endeavors to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or with any goods, wares, or merchandise, or to turn pirate, or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such, or furnishes such pirate with any ammunition, stores, or provisions of any kind, or fits out any vessel knowingly and, with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or whoever consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or whoever, being a seaman, confines the master of any vessel, shall be fined not more than one thousand dollars and imprisoned not more than three years.

SEC. 308. Whoever, being subject to the authority of the United States, shall give, sell, or otherwise supply any arms, ammunition, explosive substance, intoxicating liquor, or opium to any aboriginal native of any of the Pacific islands lying within the twentieth parallel of north latitude and the fortieth parallel of south latitude, and the one hundred and twentieth meridian of longitude west and one hundred and twentieth meridian of longitude east of Greenwich, not being in the possession or under the protection of any civilized power, shall be fined not more than fifty dollars, or imprisoned not more than three months, or both. In addition to such punishment, all articles of a similar nature to those in respect to which an offense has been committed, found in the possession of the offender, may be declared forfeited. If it shall appear to the court that such opium, wine, or spirits have been given bona fide for medical purposes, it shall be lawful for the court to dismiss the charge.

SEC. 309. All offenses against the provisions of the section last preceding, committed on any of said islands or on the waters, rocks, or keys adjacent thereto, shall be deemed committed on the high seas on board a merchant ship or vessel belonging to the United States, and the courts of the United States shall have jurisdiction accordingly.

SEC. 310. The words "vessel of the United States," wherever they occur in this chapter, shall be construed to mean a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof.

CHAPTER THIRTEEN.

CERTAIN OFFENSES IN THE TERRITORIES.

Sec.

311. Places within which sections of this chapter shall apply.

312. Circulation of obscene literature; promoting abortion.

313. Polygamy.

314. Unlawful cohabitation.

315. Joinder of counts.

316. Adultery.

Sec.

317. Incest.

318. Fornication.

319. Certificates of marriage; penalty for failure to record.

320. Prize fights, bull fights, etc.

321. Definition of "Pugilistic encounter."

322. Train robberies in Territories, etc.

SEC. 311. Except as otherwise expressly provided, the offenses defined in this chapter shall be punished as hereinafter provided,



when committed within any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States.

SEC. 312. Whoever shall sell, lend, give away, or in any manner exhibit, or offer to sell, lend, give away, or in any manner exhibit, or shall otherwise publish or offer to publish in any manner, or shall have in his possession for any such purpose, any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion, or shall advertise the same for sale, or shall write or print, or cause to be written or printed, any card, circular, book, pamphlet, advertisement, or notice of any kind, stating when, where, how, or of whom, or by what means, any of the articles above mentioned can be purchased or obtained, or shall manufacture, draw, or print, or in anywise make any of such articles, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both.

SEC. 313. Every person who has a husband or wife living, who marries another, whether married or single, and any man who simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be fined not more than five hundred dollars and imprisoned not more than five years. But this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract.

SEC. 314. If any male person cohabits with more than one woman, he shall be fined not more than three hundred dollars, or imprisoned not more than six months, or both.

SEC. 315. Counts for any or all of the offenses named in the two sections last preceding may be joined in the same information or indictment.

SEC. 316. Whoever shall commit adultery shall be imprisoned not more than three years, and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery.

SEC. 317. Whoever, being related to another person within and not including the fourth degree of consanguinity computed according to the rules of the civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, shall be deemed guilty of incest, and shall be imprisoned not more than fifteen years.

SEC. 318. If any unmarried man or woman commits fornication, each shall be fined not more than one hundred dollars, or imprisoned not more than six months.

SEC. 319. Every ceremony of marriage, or in the nature of a marriage ceremony of any kind, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage or ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full name of each of the parties concerned, and the full name of every officer, priest, and person, by whatever style or designation called or known, in any way

Circulating obscene literature, etc.
R. S., sec. 5389, p. 1044.

Punishment for.

Polygamy defined.
Vol. 22, p. 30.
R. S., sec. 5352, p. 1039.

Punishment for.

Exceptions.

Unlawful cohabitation.
Vol. 22, p. 31.
Punishment for.

Joinder of counts.

Adultery.
Punishment for.
Vol. 24, p. 635.

Incest defined.
Vol. 24, p. 636.

Punishment for.

Fornication.
Vol. 24, p. 635.
Punishment for.

Recording, etc., certificates of marriage.
Vol. 24, p. 636.



taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony filed in the office of the probate court, or, if there be none, in the office of the court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to inspection as other public records. Such certificate, or the record thereof, or a duly certified copy of such record, shall be prima facie evidence of the facts required by this section to be stated therein in any proceeding, civil or criminal, in which the matter shall be drawn in question. But nothing in this section shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence otherwise legally admissible for that purpose.

Evidence of marriage. Whoever shall willfully violate any provision of this section shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both. The provisions of this section shall apply only within the Territories of the United States.

Punishment for violations. Application.

Prize fights, bull fights, etc. Vol. 29, p. 5.

Punishment for. Application.

Definition of "pugilistic encounter."

Train robberies, etc. Vol. 32, p. 727.

Punishment for.

Accomplices.

Proofs.

SEC. 320. Whoever shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged, shall be imprisoned not more than five years. The provisions of this section shall apply only within the Territories of the United States and the District of Columbia.

SEC. 321. By the term "pugilistic encounter," as used in the section last preceding, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged.

SEC. 322. Whoever shall willfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with the intent to commit murder, or robbery, shall be fined not more than five thousand dollars, or imprisoned not more than twenty years, or both. Whoever shall willfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with intent to commit any unlawful violence upon or against any passenger on said train, or car, or upon or against any engineer, conductor, fireman, brakeman, or any officer or employee connected with said locomotive, train, or car, or upon or against any express messenger or mail agent on said train or in any car thereof, or to commit any crime or offense against any person or property thereon, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Whoever shall counsel, aid, abet, or assist in the perpetration of any of the offenses set forth in this section shall be deemed to be a principal therein. Upon the trial of any person charged with any offense set forth in this section, it shall not be necessary to set forth or prove the particular person against whom it was intended to commit the offense, or that it was intended to commit such offense against any particular person.



CHAPTER FOURTEEN.

GENERAL AND SPECIAL PROVISIONS.

General and special provisions.

Sec.	Sec.
323. Punishment of death by hanging.	333. Punishment of accessories.
324. No conviction to work corruption of blood or forfeiture of estate.	334. Accessories to robbery or piracy.
325. Whipping and the pillory abolished.	335. Felonies and misdemeanors.
326. Jurisdiction of State courts.	336. Murder and manslaughter; place where crime deemed to have been committed.
327. Pardoning power.	337. Construction of certain words.
328. Indians committing certain crimes; how punished.	338. Omission of words "hard labor" not to deprive court of power to impose.
329. Crimes committed on Indian reservations in South Dakota.	339. Arrangement and classification of sections.
330. Qualified verdicts in certain cases.	340. Jurisdiction of circuit and district courts.
331. Body of executed offender may be delivered to surgeon for dissection.	
332. Who are principals.	

SEC. 323. The manner of inflicting the punishment of death shall be by hanging.

Death penalty by hanging.
R. S., sec. 5325, p. 1035.

SEC. 324. No conviction or judgment shall work corruption of blood or any forfeiture of estate.

Corruption of blood and forfeiture of estate excluded.
R. S., sec. 5326, p. 1035.

SEC. 325. The punishment of whipping and of standing in the pillory shall not be inflicted.

Whipping and pillory abolished.
R. S., sec. 5327, p. 1035.

SEC. 326. Nothing in this Title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

Jurisdiction of state courts.
R. S., sec. 5328, p. 1035.

SEC. 327. Whenever, by the judgment of any court or judicial officer of the United States, in any criminal proceeding, any person is sentenced to two kinds of punishment, the one pecuniary and the other corporal, the President shall have full discretionary power to pardon or remit, in whole or in part, either one of the two kinds, without, in any manner, impairing the legal validity of the other kind, or of any portion of either kind, not pardoned or remitted.

Pardoning power.
R. S., sec. 5330, p. 1035.

SEC. 328. All Indians committing against the person or property of another Indian or other person any of the following crimes, namely—murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny, within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases. And all such Indians committing any of the above-named crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and be subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States: *Provided*, That any Indian who shall commit the offense of rape upon any female Indian within the limits of any Indian reservation shall be imprisoned at the discretion of the court.

Indians committing certain crimes.
Vol. 23, p. 385.
Vol. 29, p. 487.

Acts on reservations, etc.

Punishment for.

Proviso.
Rape on Indian woman.

SEC. 329. The circuit and district courts of the United States for the district of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, or larceny,

Crimes committed on Indian reservations in South Dakota.
Vol. 32, p. 793.

Provido.
Rape of female Indian.

Qualified verdicts in certain cases.
Vol. 29, p. 487.

Delivery of body of executed offender for dissection.
R. S., sec. 5340, p. 1038.

Principals defined.
R. S., secs. 5323, 5427, pp. 1035, 1052.

Punishment of accessories.
R. S., secs. 5533-5535, p. 1072.

Accessories to robbery or piracy.
R. S., secs. 5324, 5533, pp. 1035, 1072.

Felonies and misdemeanors.

Place of commission of murder or manslaughter determined.

Construction of designated words.

committed within the limits of any Indian reservation in the State of South Dakota. Any person convicted of murder, manslaughter, rape, arson, or burglary, committed within the limits of any such reservation, shall be subject to the same punishment as is imposed upon persons committing said crimes within the exclusive jurisdiction of the United States: *Provided*, That any Indian who shall commit the crime of rape upon any female Indian within any such reservation shall be imprisoned at the discretion of the court. Any person convicted of the crime of assault with intent to kill, assault with a dangerous weapon, or larceny, committed within the limits of any such reservation, shall be subject to the same punishment as is provided in cases of other persons convicted of any of said crimes under the laws of the State of South Dakota. This section is passed in pursuance of the cession of jurisdiction contained in chapter one hundred and six, Laws of South Dakota, nineteen hundred and one.

SEC. 330. In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto "without capital punishment;" and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment for life.

SEC. 331. The court before which any person is convicted of murder in the first degree, or rape, may, in its discretion, add to the judgment of death, that the body of the offender be delivered to a surgeon for dissection; and the marshal who executes such judgment shall deliver the body, after execution, to such surgeon as the court may direct; and such surgeon, or some person appointed by him, shall receive and take away the body at the time of execution.

SEC. 332. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

SEC. 333. Whoever, except as otherwise expressly provided by law, being an accessory after the fact to the commission of any offense defined in any law of the United States, shall be imprisoned not exceeding one-half the longest term of imprisonment, or fined not exceeding one-half the largest fine prescribed for the punishment of the principal, or both, if the principal is punishable by both fine and imprisonment; or if the principal is punishable by death, then an accessory shall be imprisoned not more than ten years.

SEC. 334. Whoever, without lawful authority, receives or takes into custody any vessel, goods, or other property, feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, and whoever, knowing that such pirate or robber has done or committed any such piracy or robbery, on the land or at sea, receives, entertains, or conceals any such pirate or robber, is an accessory after the fact to such robbery or piracy, and shall be imprisoned not more than ten years.

SEC. 335. All offenses which may be punished by death, or imprisonment for a term exceeding one year, shall be deemed felonies. All other offenses shall be deemed misdemeanors.

SEC. 336. In all cases of murder or manslaughter, the crime shall be deemed to have been committed at the place where the injury was inflicted, or the poison administered, or other means employed which caused the death, without regard to the place where the death occurs.

SEC. 337. Words used in this title in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" and the word "whoever" include a corporation as well as a natural person; writing includes printing and typewriting, and signature or subscription



includes a mark when the person making the same intended it as such. The words "this title," wherever they occur herein, shall be construed to mean this Act.

SEC. 338. The omission of the words "hard labor" from the provisions prescribing the punishment in the various sections of this Act, shall not be construed as depriving the court of the power to impose hard labor as a part of the punishment, in any case where such power now exists.

SEC. 339. The arrangement and classification of the several sections of this title have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapters under which any particular section is placed.

SEC. 340. The crimes and offenses defined in this Title shall be cognizable in the circuit and district courts of the United States, as prescribed in sections five hundred and sixty-three and six hundred and twenty-nine of the Revised Statutes.

Effect of omitting "hard labor."

Arrangement and classification of sections.

Jurisdiction of circuit and district courts.
R. S., secs. 563, 629, pp. 94, 110.

CHAPTER FIFTEEN.

REPEALING PROVISIONS.

Repealing provisions.

Sec.	Sec.
341. Sections, acts, and parts of acts repealed.	343. Prosecutions and punishments.
342. Accrued rights, etc., not affected.	344. Acts of limitation.
	345. Date this act shall be effective.

SEC. 341. The following sections of the Revised Statutes and Acts and parts of Acts are hereby repealed:

Sections four hundred and twelve, fifteen hundred and fifty-three, sixteen hundred and sixty-eight; sections seventeen hundred and eighty to seventeen hundred and eighty-three, both inclusive; sections seventeen hundred and eighty-five, seventeen hundred and eighty-seven, seventeen hundred and eighty-eight, seventeen hundred and eighty-nine, twenty-three hundred and seventy-three, twenty-four hundred and twelve, thirty-five hundred and eighty-three, thirty-seven hundred and eight, thirty-seven hundred and thirty-nine, thirty-seven hundred and forty, thirty-seven hundred and forty-two, thirty-eight hundred and thirty-two, thirty-eight hundred and fifty-one, thirty-eight hundred and sixty-nine, thirty-eight hundred and eighty-seven; sections thirty-eight hundred and ninety to thirty-eight hundred and ninety-four, both inclusive; section thirty-eight hundred and ninety-nine; sections thirty-nine hundred and twenty-two to thirty-nine hundred and twenty-five, both inclusive; sections thirty-nine hundred and forty-seven, thirty-nine hundred and fifty-four, thirty-nine hundred and seventy-seven, thirty-nine hundred and seventy-nine; sections thirty-nine hundred and eighty-one to thirty-nine hundred and eighty-six, both inclusive; sections thirty-nine hundred and eighty-eight, thirty-nine hundred and ninety-two, thirty-nine hundred and ninety-five, thirty-nine hundred and ninety-six, four thousand and thirteen, four thousand and sixteen, four thousand and thirty, four thousand and fifty-three, fifty-one hundred and eighty-eight, fifty-one hundred and eighty-nine; sections fifty-two hundred and eighty-one to fifty-two hundred and ninety-one, both inclusive; sections fifty-three hundred and twenty-three to fifty-three hundred and ninety-five, both inclusive; sections fifty-three hundred and ninety-eight to fifty-four hundred and ten, both inclusive; sections fifty-four hundred and thirteen to fifty-four hundred and eighty-four, both inclusive; sections fifty-four

Sections, acts, and parts of acts repealed.

R. S., secs. 412, 1553, 1668.

R. S., secs. 1780-1783, 1785, 1787-1789.

R. S., secs. 2378, 2412, 2583, 2708, 2739.

R. S., secs. 3740, 3742, 3832, 3851, 3869.

R. S., secs. 3887, 3890-3891.

R. S., secs. 3899, 3922-3925.

R. S., secs. 3947, 3954, 3977.

R. S., secs. 3979, 3981-3985, 3988, 3992, 3995.

R. S., secs. 3996, 4012, 4016, 4020, 4052, 5188.

R. S., secs. 5189, 5231-5291, 5323-5395.

R. S., secs. 5398-5410, 5418-5484, 5487-5510.



R. S., secs. 5516, 5518,
5519, 5524-5535, 5561-
5567.

hundred and eighty-seven to fifty-five hundred and ten, both inclusive; sections fifty-five hundred and sixteen, fifty-five hundred and eighteen, fifty-five hundred and nineteen; sections fifty-five hundred and twenty-four to fifty-five hundred and thirty-five, both inclusive; sections fifty-five hundred and fifty-one to fifty-five hundred and sixty-seven, both inclusive, of the Revised Statutes:

R. S., sec. 3829, p. 750.

That part of section thirty-eight hundred and twenty-nine of the Revised Statutes which reads as follows: "And every person who, without authority from the Postmaster-General, sets up or professes to keep any office or place of business bearing the sign, name, or title of post-office, shall, for every such offense, be liable to a penalty of not more than five hundred dollars;"

R. S., sec. 3867, p. 755.

That part of section thirty-eight hundred and sixty-seven of the Revised Statutes which reads as follows: "And any person not connected with the letter-carrier branch of the postal service who shall wear the uniform which may be prescribed shall, for every such offense, be punishable by a fine of not more than one hundred dollars, or by imprisonment for not more than six months, or both;"

R. S., sec. 4046, p. 779.

That part of section four thousand and forty-six of the Revised Statutes which reads as follows: "Every postmaster, assistant, clerk, or other person employed in or connected with the business or operations of any money-order office who converts to his own use, in any way whatever, or loans, or deposits in any bank, except as authorized by this title, or exchanges for other funds, any portion of the public money-order funds, shall be deemed guilty of embezzlement; and any such person, as well as every other person advising or participating therein, shall, for every such offense, be imprisoned for not less than six months nor more than ten years, and be fined in a sum equal to the amount embezzled; and any failure to pay over or produce any money-order funds intrusted to such person shall be taken to be prima facie evidence of embezzlement; and upon the trial of any indictment against any person for such embezzlement, it shall be prima facie evidence of a balance against him to produce a transcript from the money-order account books of the Sixth Auditor. But nothing herein contained shall be construed to prohibit any postmaster depositing, under the direction of the Postmaster-General, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as postmaster, any money order or other funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or otherwise, when instructed or required to do so by the Postmaster-General, for the purpose of remitting surplus money-order funds from one post-office to another, to be used in payment of money orders."

Vol. 18, p. 259.

"An Act to protect lines of telegraph constructed or used by the United States from malicious injury and obstruction," approved June twenty-third, eighteen hundred and seventy-four;

Vol. 18, p. 261.

"An Act to protect persons of foreign birth against forcible constraint or involuntary servitude," approved June twenty-third, eighteen hundred and seventy-four;

Vol. 18, p. 235.

That part of "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," approved June twenty-third, eighteen hundred and seventy-four, which reads as follows: "That any postmaster who shall affix his signature to the approval of any bond of a bidder or to the certificate of sufficiency of sureties in any contract before the said bond or contract is signed by the bidder or contractor and his sureties, or shall knowingly, or without the exercise of due diligence, approve any bond of a bidder with insufficient sureties, or shall knowingly make any false or fraudulent certificate, shall be forthwith dismissed from office and



be thereafter disqualified from holding the office of postmaster, and shall also be deemed guilty of a misdemeanor, and on conviction thereof be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or both;"

Sections one, two, and three of "An Act to protect ornamental and other trees on Government reservations and on lands purchased by the United States, and for other purposes," approved March third, eighteen hundred and seventy-five;

"An Act to punish certain larcenies and the receivers of stolen goods," approved March third, eighteen hundred and seventy-five;

"An Act to amend section fifty-four hundred and fifty-seven of the Revised Statutes of the United States, relating to counterfeiting," approved January sixteenth, eighteen hundred and seventy-seven;

That part of section five of "An Act establishing post-roads, and for other purposes," approved March third, eighteen hundred and seventy-seven, which reads as follows: "And if any person shall make use of any such official envelope to avoid the payment of postage on his private letter, package, or other matter in the mail, the person so offending shall be deemed guilty of a misdemeanor and subject to a fine of three hundred dollars, to be prosecuted in any court of competent jurisdiction;"

That part of section one of "An Act making appropriations for the service of the Post-Office Department for the year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes," approved June seventeenth, eighteen hundred and seventy-eight, which reads as follows: "And any postmaster who shall make a false return to the auditor, for the purpose of fraudulently increasing his compensation under the provisions of this or any other Act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not less than fifty nor more than five hundred dollars, or imprisoned for a term not exceeding one year, or punished by both such fine and imprisonment, in the discretion of the court; and no postmaster of any class, or other person connected with the postal service, intrusted with the sale or custody of postage stamps, stamped envelopes, or postal cards, shall use or dispose of them in the payment of debts or in the purchase of merchandise or other salable articles, or pledge or hypothecate the same, or sell or dispose of them except for cash, or sell or dispose of postage stamps or postal cards for any larger or less sum than the values indicated on their faces, or sell or dispose of stamped envelopes for a larger or less sum than is charged therefor by the Post-Office Department for like quantities, or sell or dispose of postage stamps, stamped envelopes, or postal cards otherwise than as provided by law and the regulations of the Post-Office Department; and any postmaster or other person connected with the postal service who shall violate any of these provisions shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars, or imprisoned for a term not exceeding one year;"

"An Act to amend section fifty-four hundred and ninety-seven of the Revised Statutes, relating to embezzlement by officers of the United States," approved February third, eighteen hundred and seventy-nine;

That part of section one of "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes," approved March third, eighteen hundred and seventy-nine, which reads as follows: "That nothing contained in section thirty-nine hundred and eighty-two of the Revised Statutes shall be construed as prohibiting any person from receiving and delivering to the nearest post-

Vol. 18, pp. 481, 482

Vol. 18, p. 479.

Vol. 19, p. 223.

Vol. 19, p. 236.

Vol. 20, p. 141.

Vol. 20, p. 250.

Vol. 20, pp. 356, 359, 361, 362.



Vol. 21, p. 4.

office or postal car mail matter properly stamped." Also sections thirteen, twenty-three, twenty-seven, and twenty-eight of said Act; "An Act to amend section fifty-four hundred and forty of the Revised Statutes," approved May seventeenth, eighteen hundred and seventy-nine;

Vol. 22, pp. 80, 81.

Sections one, three, and four of "An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two;

Vol. 22, pp. 406, 407.

Sections eleven, twelve, thirteen, fourteen, and fifteen of "An Act to regulate and improve the civil service of the United States," approved January sixteenth, eighteen hundred and eighty-three;

Vol. 23, p. 11.

"An Act making it a felony for a person to falsely and fraudulently assume or pretend to be an officer or employee acting under authority of the United States or any department or officer thereof, and prescribing a penalty therefor," approved April eighteenth, eighteen hundred and eighty-four;

Vol. 23, p. 22.

"An Act to prevent and punish the counterfeiting within the United States of notes, bonds, or other securities of foreign governments," approved May sixteenth, eighteen hundred and eighty-four;

Vol. 23, p. 385.

Section nine of "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes," approved March third, eighteen hundred and eighty-five;

Vol. 24, p. 355.

Section two of "An Act to amend the Act entitled 'An Act to modify the money-order system, and for other purposes,' approved March third, eighteen hundred and eighty-three," approved January third, eighteen hundred and eighty-seven;

Vol. 24, pp. 635, 636.

Sections three, four, five, nine, and ten of "An Act to amend an Act entitled 'An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two," approved March third, eighteen hundred and eighty-seven;

Vol. 25, p. 2.

Section two of "An Act relating to permissible marks, printing or writing, upon second, third, and fourth class matter, and to amend the twenty-second and twenty-third sections of an Act entitled 'An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes,' approved January twentieth, eighteen hundred and eighty-eight;

Vol. 25, p. 166.

"An Act to amend section fifty-three hundred and eighty-eight of the Revised Statutes of the United States in relation to timber deprecations," approved June fourth, eighteen hundred and eighty-eight;

Vol. 25, p. 187.

"An Act relating to postal crimes, and amendatory of the statutes therein mentioned," approved June eighteenth, eighteen hundred and eighty-eight;

Vol. 25, p. 496.

"An Act amendatory of 'An Act relating to postal crimes and amendatory of the statutes therein mentioned,' approved June eighteenth, eighteen hundred and eighty-eight, and for other purposes," approved September twenty-sixth, eighteen hundred and eighty-eight;

Vol. 25, p. 658.

"An Act to punish, as a felony, the carnal and unlawful knowing of any female under the age of sixteen years," approved February ninth, eighteen hundred and eighty-nine;

Vol. 25, p. 873.

Sections one and two of "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails," approved March second, eighteen hundred and eighty-nine;



Section one of "An Act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes," approved September nineteenth, eighteen hundred and ninety;

"An Act further to prevent counterfeiting or manufacture of dies, tools, or other implements used in counterfeiting, and providing penalties therefor, and providing for the issue of search warrants in certain cases," approved February tenth, eighteen hundred and ninety-one;

"An Act to amend sections fifty-three hundred and sixty-five and fifty-three hundred and sixty-six of the Revised Statutes relating to barratry on the high seas," approved August sixth, eighteen hundred and ninety-four;

Sections one and two of "An Act for the suppression of lottery traffic through national and interstate commerce and the postal service, subject to the jurisdiction and laws of the United States," approved March second, eighteen hundred and ninety-five;

"An Act to prohibit prize fighting and pugilism and fights between men and animals, and to provide penalties therefor in the Territories and the District of Columbia," approved February seventh, eighteen hundred and ninety-six;

That part of "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighth, eighteen hundred and ninety-four, and that part of "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and ninety-six," approved March second, eighteen hundred and ninety-five, and that part of "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven," approved April twenty-fifth, eighteen hundred and ninety-six, which reads as follows: "Any person who shall knowingly issue or publish any weather forecasts or warnings of weather conditions falsely representing such forecasts or warnings to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the government service, shall be deemed guilty of a misdemeanor, and, on conviction thereof, for each offense be fined in a sum not exceeding five hundred dollars, or imprisoned not to exceed ninety days, or be both fined and imprisoned, in the discretion of the court;"

That part of "An Act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes," approved June tenth, eighteen hundred and ninety-six, which reads as follows: "Provided further, That hereafter it shall be unlawful for any person to destroy, deface, change, or remove to another place and section corner, quarter-section corner, or meander post on any Government line of survey, or to cut down any witness tree or any tree blazed to mark the line of a Government survey, or to deface, change, or remove any monument or bench mark of any Government survey. That any person who shall offend against any of the provisions of this paragraph shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court, shall be fined not exceeding two hundred and fifty dollars or be imprisoned not more than one hundred days. All the fines accruing under this paragraph shall be paid into the Treasury, and the informer in each case of conviction shall be paid the sum of twenty-five dollars;"

"An Act to reduce the cases in which the penalty of death may be inflicted," approved January fifteenth, eighteen hundred and ninety-seven,

Vol. 26, p. 465.

Vol. 26, p. 742.

Vol. 28, p. 233.

Vol. 28, p. 963.

Vol. 29, p. 5.

Vol. 28, pp. 274, 737.

Vol. 29, p. 108.

Vol. 29, p. 343.

Vol. 29, p. 487.



Vol. 29, p. 512.

"An Act to prevent the carrying of obscene literature and articles designed for indecent and immoral use from one State or Territory into another State or Territory," approved February eighth, eighteen hundred and ninety-seven;

Vol. 29, p. 594.

"An Act to prevent forest fires on the public domain," approved February twenty-fourth, eighteen hundred and ninety-seven;

Vol. 29, p. 595.

"An Act to prevent the purchasing of or speculating in claims against the Federal Government by United States officers," approved February twenty-fifth, eighteen hundred and ninety-seven;

Vol. 29, p. 625.

"An Act to amend section fifty-four hundred and fifty-nine of the Revised Statutes, prescribing the punishment for mutilating United States coins, and for uttering or passing or attempting to utter or pass such mutilated coins," approved March third, eighteen hundred and ninety-seven;

Vol. 29, p. 691.

Section eighteen of "An Act to amend the laws relating to navigation," approved March third, eighteen hundred and ninety-seven;

Vol. 30, p. 442.

That part of section one of "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirteenth, eighteen hundred and ninety-nine," approved June thirteenth, eighteen hundred and ninety-eight, which reads as follows: "Provided, That any person or persons who shall place or cause to be placed any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mails with intent to cause an increase in the compensation of the railroad mail carrier over whose route such mail matter may pass, shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined not less than five hundred dollars nor more than twenty thousand dollars, and shall be imprisoned at hard labor not less than thirty days nor more than five years;"

Vol. 30, p. 209.

Section seventeen of "An Act to provide revenue for the Government, and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven;

Vol. 32, p. 1175.

Section three of an Act entitled "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved March third, nineteen hundred and three;

Vol. 30, p. 717.

"An Act to protect the harbor defenses and fortifications constructed or used by the United States from malicious injury, and for other purposes," approved July seventh, eighteen hundred and ninety-eight;

Vol. 31, p. 169.

"An Act to amend an Act entitled 'An Act to prevent forest fires on the public domain,' approved February twenty-fourth, eighteen hundred and ninety-seven," approved May fifth, nineteen hundred;

Vol. 31, p. 188.

Sections two, three, and four of "An Act to enlarge the powers of the Department of Agriculture, prohibit the transportation by interstate commerce of game killed in violation of local laws, and for other purposes," approved May twenty-fifth, nineteen hundred;

Vol. 32, p. 33.

"An Act to prevent the sale of firearms, opium, and intoxicating liquors in certain islands of the Pacific," approved February fourteenth, nineteen hundred and two;

Vol. 32, p. 727.

"An Act for the suppression of train robbery in the Territories of the United States and elsewhere, and for other purposes," approved July first, nineteen hundred and two;

Vol. 32, p. 793.

"An Act conferring jurisdiction upon the circuit and district courts for the district of South Dakota in certain cases, and for other purposes," approved February second, nineteen hundred and three;

Vol. 32, p. 1223.

"An Act to amend section three of the 'Act further to prevent counterfeiting or manufacturing of dies, tools, or other implements used in manufacturing,' and so forth, approved February tenth, eighteen hundred and ninety-one," approved March third, nineteen hundred and three;



"An Act for the protection of the Bull Run Forest Reserve and the sources of the water supply of the city of Portland, State of Oregon," approved April twenty-eighth, nineteen hundred and four;

Vol. 33, p. 526.

"An Act to amend the Act of February eighth, eighteen hundred and ninety-seven, entitled 'An Act to prevent the carrying of obscene literature and articles designed for indecent and immoral use from one State or Territory into another State or Territory,' so as to prevent the importation and exportation of the same," approved February eighth, nineteen hundred and five;

Vol. 33, p. 705.

"An Act to amend section thirteen of chapter three hundred and ninety-four of the Supplement to the Revised Statutes of the United States," approved March second, nineteen hundred and five;

Vol. 33, p. 823.

Section five of "An Act to amend sections forty-four hundred and seventeen, forty-four hundred and fifty-three, forty-four hundred and eighty-eight, and forty-four hundred and ninety-nine of the Revised Statutes relating to misconduct by officers or owners of vessels," approved March third, nineteen hundred and five;

Vol. 33, p. 1025.

"An Act to punish the cutting, chipping, or boxing of trees on the public lands," approved June fourth, nineteen hundred and six.

Vol. 34, p. 208.

Sections sixteen, seventeen, and nineteen of "An Act to establish a bureau of immigration and naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States," approved June twenty-ninth, nineteen hundred and six.

Vol. 34, p. 602.

An Act entitled "An Act to prohibit corporations from making money contributions in connection with political elections," approved January twenty-sixth, nineteen hundred and seven.

Vol. 34, p. 864.

An Act entitled "An Act to amend sections one, two, and three of an Act entitled 'An Act to prohibit shanghaiing in the United States,' approved June twenty-eighth, nineteen hundred and six," approved March second, nineteen hundred and seven.

Vol. 34, p. 1233.

An Act entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved May thirtieth, nineteen hundred and eight.

Public Laws, 1st sess., p. 554.

An Act entitled "An Act to amend section fifty-four hundred and thirty-eight of the Revised Statutes," approved May thirtieth, nineteen hundred and eight.

Public Laws, 1st sess., p. 555.

Also all other sections and parts of sections of the Revised Statutes and Acts and parts of Acts of Congress, in so far as they are embraced within and superseded by this Act, are hereby repealed; the remaining portions thereof to be and remain in force with the same effect and to the same extent as if this Act had not been passed.

General repeal.

SEC. 342. The repeal of existing laws or modifications thereof embraced in this title shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause prior to said repeal or modifications, but all liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made.

Pending actions, etc., not affected.

SEC. 343. All offenses committed, and all penalties, forfeitures, or liabilities incurred prior to the taking effect hereof, under any law embraced in, or changed, modified, or repealed by this title, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed.

Prosecutions, etc., prior to taking effect of this law.

SEC. 344. All acts of limitation, whether applicable to civil causes and proceedings, or for the recovery of penalties or forfeitures, embraced in, modified, changed, or repealed by this title, shall not be affected thereby; and all suits or proceedings for causes arising or acts done or committed prior to the taking effect hereof may be commenced and prosecuted within the same time and with the same effect as if said repeal had not been made.

Limitations.

Prosecution, etc.

SEC. 345. This Act shall take effect and be in force on and after the first day of January, nineteen hundred and ten.

In effect January 1 1910.

Approved March 4. 1909.



Proof-of-Claim – B. 8 / 8

The Law of Land Warfare: pp. Cover: 1 ; Sec. 45.
Building and
Areas To Be Protected; Sec 46. Such Buildings to
Display Sign Specified in Naval Treaty: 21 ; Art: ~H.
IX, art 5, 2d par.~
Field Manual 27-10
Department of the Army
Washington 25, District of Columbia, 18 July 1956

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Gila County, Az, Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

b. Diplomatic and Consular Personnel. Diplomatic and consular personnel of a neutral State should not be prevented from leaving a besieged place before hostilities commence, but this privilege cannot be claimed while hostilities are in progress. Should they voluntarily decide to remain, they must undergo the same risks as other inhabitants.

45. Buildings and Areas To Be Protected

a. Buildings To Be Spared.

In sieges and bombardments all necessary measures must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand. (HR, art. 27.) (See also GC, arts. 18 and 19; pars. 257 and 258 herein, dealing with the identification and protection of civilian hospitals.)

b. Areas To Be Protected. In order to protect buildings used for medical purposes from being accidentally hit, it is desirable that the wounded and sick should, if possible, be concentrated in an area remote from military objectives or in an area neutralized by arrangement with the enemy. See GC, arts. 14, 18, and 19; pars. 253, 257, and 258 herein, concerning the establishment of hospital and safety zones and localities.)

46. Such Buildings to Display Sign Specified in Naval Treaty

a. Treaty Provision.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white. (H. IX, art 5, 2d par.)

b. Application of Rule. The foregoing rule adopted in this convention for naval warfare may be adopted for protecting buildings under bombardment in land warfare.

c. Use of Foregoing for Military Purposes. The besieging forces are not required to observe the signs indicating inviolability of buildings that are known to be used for military purposes, such as quarters, warehouses, observation posts, or signal installations.

47. Pillage Forbidden

The pillage of a town or place, even when taken by assault, is prohibited. (HR, art. 28.)

*FM 27-10

FIELD MANUAL }
No. 27-10

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., 18 July 1956

THE LAW OF LAND WARFARE

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* This manual supersedes FM 27-10, 1 October 1940, including C 1, 15 November 1944.



FM 27-10

DEPARTMENT OF THE ARMY FIELD MANUAL

THE LAW OF LAND WARFARE

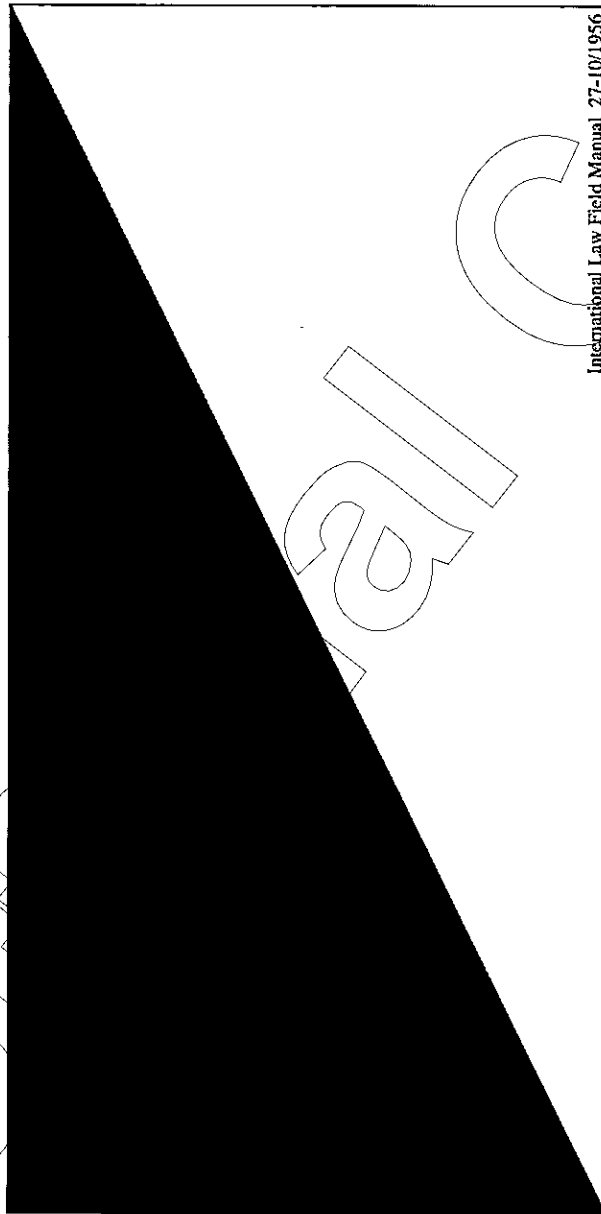
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International Law Field Manual 27-10/1956



Proof-of-Claim – C. 1 / 4

Documents and Statements Pertaining the the
Banking Emergency;
Presidential Proclamations, Federal Legislation,
executive Orders, Regulations, and other documents
and Official Statements;
Part I, February 25 – March 31, 1933.

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:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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DOCUMENTS AND STATEMENTS PERTAINING TO THE BANKING EMERGENCY

Presidential Proclamations, Federal Legislation, Executive
Orders, Regulations, and other Documents
and Official Statements

PART I

FEBRUARY 25-MARCH 31, 1933



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933



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For convenient use, Presidential proclamations, Federal legislation, Executive orders, regulations, and other documents pertaining to the banking emergency are here reproduced. Material pertaining primarily to gold, currency, and foreign exchange is presented as Part II of this publication.

(111)



During February and the first days of March, 1933, banking difficulties became acute in many parts of the country. By Saturday, March 4, banks in practically all States were either closed or were operating under restrictions, on the authority of State officials and of the Comptroller of the Currency. Authority for the Comptroller of the Currency to exercise with respect to national banks such powers as State officials have with respect to State banks was given by the following joint resolution:

Joint resolution
of February 25,
1933

[PUBLIC RESOLUTION—No. 58—72d CONGRESS]

[S. J. Res. 256]

JOINT RESOLUTION

Authorizing the Comptroller of the Currency to exercise with respect to national banking associations powers which State officials may have with respect to State banks, savings banks, and/or trust companies under State laws.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, with the approval of the Secretary of the Treasury, the Comptroller of the Currency shall have and may exercise to such extent as he deems advisable with respect to any national banking association any powers which the State officials having supervision of State banks, savings banks and/or trust companies in the State in which such national banking associations are located may have with respect to such State institutions under State laws now in force or hereafter enacted: *Provided*, That nothing herein shall be construed to permit the establishment of branches of either national or State member banks or allow consolidation of either national or State member banks not allowed by existing laws.

Expenses incurred by the Comptroller of the Currency in the exercise of such powers may be assessed by him against the banks concerned and, when so assessed, shall be paid by such banks.

Nothing herein shall be construed to impair any power otherwise possessed by the Comptroller of the Currency, the Secretary of the Treasury or the Federal Reserve Board.

The powers herein conferred shall terminate six months from its approval by the President; but the President of the United States may extend its force by proclamation for an additional six months.

Approved, February 25, 1933.

By joint resolution, the Comptroller of the Currency was given, for a period of 6 months (subject to extension by the President for an additional 6 months), special regulatory authority in regard to banks in the District of Columbia. This resolution authorized the

Joint resolution
of March 3, 1933

Comptroller, when necessary for the protection of the interests of depositors and other creditors of any incorporated bank and/or trust company doing business in the District of Columbia ". . . to prescribe such rules and regulations as he deems advisable governing the receipt and withdrawal of deposits by and from any such bank and trust company . . ."

In order to place all banks on a uniform basis of restricted operations and to permit the development of adequate means for dealing with the national emergency, the President of the United States issued the following proclamation on the morning of March 6, declaring a national bank holiday:

"BY THE PRESIDENT OF THE UNITED STATES
OF AMERICA

"A PROCLAMATION

"Whereas there have been heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding; and

"Whereas continuous and increasingly extensive speculative activity abroad in foreign exchange has resulted in severe drains on the Nation's stocks of gold; and

"Whereas these conditions have created a national emergency; and

"Whereas it is in the best interests of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange and permitting the application of appropriate measures to protect the interests of our people; and

"Whereas it is provided in section 5 (b) of the Act of October 6, 1917 (40 Stat. L. 411) as amended, "That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency * * *"; and

"Whereas it is provided in Section 16 of the said Act 'that whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President

(1)

issued in compliance with the provisions of this Act, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than ten years, or both; * * *;

"Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, in view of such national emergency and by virtue of the authority vested in me by said Act and in order to prevent the export, hoarding, or earmarking of gold or silver coin or bullion or currency, do hereby proclaim, order, direct and declare that from Monday, the sixth day of March, to Thursday, the ninth day of March, Nineteen Hundred and Thirty Three, both dates inclusive, there shall be maintained and observed by all banking institutions and all branches thereof located in the United States of America, including the territories and insular possessions, a bank holiday, and that during said period all banking transactions shall be suspended. During such holiday, excepting as hereinafter provided, no such banking institution or branch shall pay out, export, earmark, or permit the withdrawal or transfer in any manner or by any device whatsoever, of any gold or silver coin or bullion or currency or take any other action which might facilitate the hoarding thereof; nor shall any such banking institution or branch pay out deposits, make loans or discounts, deal in foreign exchange, transfer credits from the United States to any place abroad, or transact any other banking business whatsoever.

"During such holiday, the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and empowered (a) to permit any or all of such banking institutions to perform any or all of the usual banking functions, (b) to direct, require or permit the issuance of clearing house certificates or other evidences of claims against assets of banking institutions, and (c) to authorize and direct the creation in such banking institutions of special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal reserve banks or invested in obligations of the United States.

"As used in this order the term 'banking institutions' shall include all Federal reserve banks, national banking associations, banks, trust companies, savings banks, building and loan associations, credit unions, or other corporations, partnerships, associations or persons,

¹ See Interpretations No. 3 (Mar. 7) and No. 10 (Mar. 14), p. 15.

engaged in the business of receiving deposits, making loans, discounting business paper, or transacting any other form of banking business.

"In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done in the City of Washington this 6th day of March—1 a. m. in the year of our Lord One Thousand Nine Hundred and Thirty-three, and of the Independence of the United States the One Hundred and Fifty-seventh.

[SEAL]

"FRANKLIN D. ROOSEVELT

"By the President:

"CORDELL HULL

"Secretary of State"

On March 9, 1933, the President sent the following message to Congress:

Message to Congress

"On March 3 banking operations in the United States ceased. To review at this time the causes of this failure of our banking system is unnecessary. Suffice it to say that the Government has been compelled to step in for the protection of depositors and the business of the nation.

"Our first task is to reopen all sound banks. This is an essential preliminary to subsequent legislation directed against speculation with the funds of depositors and other violations of positions of trust.

"In order that the first objective—the opening of banks for the resumption of business—may be accomplished, I ask of the Congress the immediate enactment of legislation giving to the executive branch of the Government control over banks for the protection of depositors; authority forthwith to open such banks as have already been ascertained to be in sound condition and other such banks as rapidly as possible; and authority to reorganize and reopen such banks as may be found to require reorganization to put them on a sound basis.

"I ask amendments to the Federal Reserve Act to provide for such additional currency, adequately secured, as it may become necessary to issue to meet all demands for currency and at the same time to achieve this end without increasing the unsecured indebtedness of the Government of the United States.

"I can not too strongly urge upon the Congress the clear necessity for immediate action. A continuation of the strangulation of banking facilities is unthinkable. The passage of the



proposed legislation will end this condition, and I trust within a short space of time will result in a resumption of business activities.

"In addition, it is my belief that this legislation will not only lift immediately all unwarranted doubts and suspicions in regards to banks which are 100 per cent sound, but will also mark the beginning of a new relationship between the banks and the people of this country.

"The members of the new Congress will realize, I am confident, the grave responsibility which lies upon me and upon them.

"In the short space of five days it is impossible for us to formulate completed measures to prevent the recurrence of the evils of the past. This does not and should not, however, justify any delay in accomplishing this first step.

"At an early moment I shall request of the Congress two other measures which I regard as of immediate urgency. With action taken thereon we can proceed to the consideration of a rounded program of national restoration."

On March 9, 1933, following receipt of the President's message, Congress passed an act "to provide relief in the existing national emergency in banking, and for other purposes." The text of the act is as follows:

[PUBLIC—No. 1—73D CONGRESS]

[H.R. 1491]

AN ACT

To provide relief in the existing national emergency in banking, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

TITLE I

SECTION 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the act of October 6, 1917, as amended, are hereby approved and confirmed.

Sec. 2. Subdivision (b) of section 5 of the act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

"(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the

President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation."

SEC. 3. Section 11 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

SEC. 4. In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.



TITLE II

Sec. 201. This title may be cited as the "Bank Conservation Act."

Sec. 202. As used in this title, the term "bank" means (1) any national banking association, and (2) any bank or trust company located in the District of Columbia and operating under the supervision of the Comptroller of the Currency; and the term "State" means any State, Territory, or possession of the United States, and the Canal Zone.

Sec. 203. Whenever he shall deem it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, the Comptroller of the Currency may appoint a conservator for such bank and require of him such bond and security as the Comptroller of the Currency deems proper. The conservator, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all the rights, powers, and privileges now possessed by or hereafter given receivers of insolvent national banks and shall be subject to the obligations and penalties, not inconsistent with the provisions of this title, to which receivers are now or may hereafter become subject. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto shall, subject to the other provisions of this title, be the same as if a receiver had been appointed therefor. All expenses of any such conservatorship shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other lien provided by this Act or otherwise. The conservator shall receive as salary an amount no greater than that paid to employees of the Federal Government for similar services.

Sec. 204. The Comptroller of the Currency shall cause to be made such examinations of the affairs of such bank as shall be necessary to inform him as to the financial condition of such bank, and the examiner shall make a report thereon to the Comptroller of the Currency at the earliest practicable date.

Sec. 205. If the Comptroller of the Currency becomes satisfied that it may safely be done and that it would be in the public interest, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he may prescribe.

Sec. 206. While such bank is in the hands of the conservator appointed by the Comptroller of the Currency, the Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the Comptroller may safely be used for this purpose; and the Comptroller may, in his discretion, permit the conservator to receive deposits, but deposits received while the bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such bank existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator shall be kept on hand in cash, invested in the direct obligations of the United States, or deposited with a Federal

reserve bank. The Federal reserve banks are hereby authorized to open and maintain separate deposit accounts for such purpose, or for the purpose of receiving deposits from State officials in charge of State banks under similar circumstances.

Sec. 207. In any reorganization of any national banking association under a plan of a kind which, under existing law, requires the consent, as the case may be, (a) of depositors and other creditors or (b) of stockholders or (c) of both depositors and other creditors and stockholders, such reorganization shall become effective only (1) when the Comptroller of the Currency shall be satisfied that the plan of reorganization is fair and equitable as to all depositors, other creditors and stockholders and is in the public interest and shall have approved the plan subject to such conditions, restrictions and limitations as he may prescribe and (2) when, after reasonable notice of such reorganization, as the case may require, (A) depositors and other creditors of such bank representing at least 75 per cent in amount of its total deposits and other liabilities as shown by the books of the national banking association or (B) stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the national banking association or (C) both depositors and other creditors representing at least 75 per cent in amount of the total deposits and other liabilities and stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the national banking association, shall have consented in writing to the plan of reorganization: *Provided, however,* That claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the national banking association in determining the 75 per cent thereof as above provided. When such reorganization becomes effective, all books, records, and assets of the national banking association shall be disposed of in accordance with the provisions of the plan and the affairs of the national banking association shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed by the Comptroller of the Currency. In any reorganization which shall have been approved and shall have become effective as provided herein, all depositors and other creditors and stockholders of such national banking association, whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization.

Sec. 208. After fifteen days after the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in section 207 hereof, the provisions of section 206 of this title with respect to the segregation of deposits received while it is in the hands of the conservator and with respect to the use of such deposits to liquidate the indebtedness of such bank shall no longer be effective: *Provided,* That before the conservator shall turn back the affairs of the bank to its board of directors he shall cause to be published in a newspaper published in the city, town or county in which such bank is located, and if no newspaper is published in such city, town or county, in a newspaper to be selected by the Comptroller of the Currency published in the State in which the bank is located, a notice in form approved by the Comptroller, stating the date on which the affairs of the bank will be returned to its board of directors and that the said provisions of sec-



tion 206 will not be effective after fifteen days after such date; and on the date of the publication of such notice the conservator shall immediately send to every person who is a depositor in such bank under section 206 a copy of such notice by registered mail addressed to the last known address of such person as shown by the records of the bank, and the conservator shall send similar notice in like manner to every person making deposit in such bank under section 206 after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors.

Sec. 209. Conservators appointed pursuant to the provisions of this title shall be subject to the provisions of and to the penalties prescribed by section 5209 of the Revised Statutes (U. S. C., Title 12, sec. 592); and sections 112, 113, 114, 115, 116 and 117 of the Criminal Code of the United States (U. S. C., Title 18, secs. 202, 203, 204, 205, 206 and 207), in so far as applicable, are extended to apply to contracts, agreements, proceedings, dealings, claims and controversies by or with any such conservator or the Comptroller of the Currency under the provisions of this title.

Sec. 210. Nothing in this title shall be construed to impair in any manner any powers of the President, the Secretary of the Treasury, the Comptroller of the Currency, or the Federal Reserve Board.

Sec. 211. The Comptroller of the Currency is hereby authorized and empowered, with the approval of the Secretary of the Treasury, to prescribe such rules and regulations as he may deem necessary in order to carry out the provisions of this title. Whoever violates any rule or regulation made pursuant to this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

TITLE III

Sec. 301. Notwithstanding any other provision of law, any national banking association may, with the approval of the Comptroller of the Currency and by vote of shareholders owning a majority of the stock of such association, upon not less than five days' notice, given by registered mail pursuant to action taken by its board of directors, issue preferred stock in such amount and with such par value as shall be approved by said Comptroller, and make such amendments to its articles of association as may be necessary for this purpose; but, in the case of any newly organized national banking association which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in.

Sec. 302. (a) The holders of such preferred stock shall be entitled to cumulative dividends at a rate not exceeding 6 per centum per annum, but shall not be held individually responsible as such holders for any debts, contracts, or engagements of such association and shall not be liable for assessments to restore impairments in the capital of such association as now provided by law with reference to holders of common stock. Notwithstanding any other provision of law, the holders of such preferred stock shall have such voting rights, and such stock shall be subject to retirement in such manner and on such terms and conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency.

(b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and, if the association is placed in voluntary liquidation or a conservator

or a receiver is appointed therefor, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock plus all accumulated dividends.

Sec. 303. The term "common stock" as used in this title means stock of national banking associations other than preferred stock issued under the provisions of this title. The term "capital" as used in provisions of law relating to the capital of national banking associations shall mean the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired; and the term "capital stock", as used in section 12 of the Act of March 14, 1900, shall mean only the amount of common stock outstanding.

Sec. 304. If in the opinion of the Secretary of the Treasury any national banking association or any State bank or trust company is in need of funds for capital purposes either in connection with the organization or reorganization of such association, State bank or trust company or otherwise, he may, with the approval of the President, request the Reconstruction Finance Corporation to subscribe for preferred stock in such association, State bank or trust company, or to make loans secured by such stock as collateral, and the Reconstruction Finance Corporation may comply with such request. The Reconstruction Finance Corporation may, with the approval of the Secretary of the Treasury, and under such rules and regulations as he may prescribe, sell in the open market or otherwise the whole or any part of the preferred stock of any national banking association, State bank or trust company acquired by the Corporation pursuant to this section. The amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized and empowered to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this section.

TITLE IV

Sec. 401. The sixth paragraph of Section 18 of the Federal Reserve Act is amended to read as follows:

"Upon the deposit with the Treasurer of the United States, (a) of any direct obligations of the United States or (b) of any notes, drafts, bills of exchange, or bankers' acceptances acquired under the provisions of this Act, any Federal reserve bank making such deposit in the manner prescribed by the Secretary of the Treasury shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, duly registered and countersigned. When such circulating notes are issued against the security of obligations of the United States, the amount of such circulating notes shall be equal to the face value of the direct obligations of the United States so deposited as security; and, when issued against the security of notes, drafts, bills of exchange and bankers' acceptances acquired under the provisions of this Act, the amount thereof shall be equal to not more than 90 per cent of the estimated value of such notes, drafts, bills of exchange and bankers' acceptances so deposited as security. Such notes shall be the obligations of the Federal reserve bank procuring the same, shall be in form prescribed by the Secretary of the Treasury, shall be receivable at par in all parts of the United States for the same purposes as are national bank notes, and shall be redeemable in lawful money of the United States on presentation at the United States Treasury or at the bank of issue. The Secretary of the Treasury is authorized and empowered to prescribe regulations governing the issuance, redemption, replacement, retirement and destruction of

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such circulating notes and the release and substitution of security therefor. Such circulating notes shall be subject to the same tax as is provided by law for the circulating notes of national banks secured by 2 per cent bonds of the United States. No such circulating notes shall be issued under this paragraph after the President has declared by proclamation that the emergency recognized by the President by proclamation of March 6, 1933, has terminated, unless such circulating notes are secured by deposits of bonds of the United States bearing the circulation privilege. When required to do so by the Secretary of the Treasury, each Federal reserve agent shall act as agent of the Treasurer of the United States or of the Comptroller of the Currency, or both, for the performance of any of the functions which the Treasurer or the Comptroller may be called upon to perform in carrying out the provisions of this paragraph. Appropriations available for distinctive paper and printing United States currency or national bank currency are hereby made available for the production of the circulating notes of Federal reserve banks herein provided; but the United States shall be reimbursed by the Federal reserve bank to which such notes are issued for all expenses necessarily incurred in connection with the procuring of such notes and all other expenses incidental to their issue, redemption, replacement, retirement and destruction."

SEC. 402. Section 10 (b) of the Federal Reserve Act, as amended, is further amended to read as follows:

"Sec. 10(b). In exceptional and exigent circumstances, and when any member bank has no further eligible and acceptable assets available to enable it to obtain adequate credit accommodations through rediscounting at the Federal reserve bank or any other method provided by this Act other than that provided by section 10 (a), any Federal reserve bank, under rules and regulations prescribed by the Federal Reserve Board, may make advances to such member bank on its time or demand notes secured to the satisfaction of such Federal reserve bank. Each such note shall bear interest at a rate not less than 1 per centum per annum higher than the highest discount rate in effect at such Federal reserve bank on the date of such note. No advance shall be made under this section after March 3, 1934, or after the expiration of such additional period not exceeding one year as the President may prescribe."

SEC. 403. Section 13 of the Federal Reserve Act, as amended, is amended by adding at the end thereof the following new paragraph:

"Subject to such limitations, restrictions and regulations as the Federal Reserve Board may prescribe, any Federal reserve bank may make advances to any individual, partnership or corporation on the promissory notes of such individual, partnership or corporation secured by direct obligations of the United States. Such advances shall be made for periods not exceeding 90 days and shall bear interest at rates fixed from time to time by the Federal reserve bank, subject to the review and determination of the Federal Reserve Board."

TITLE V

SEC. 501. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$2,000,000, which shall be available for expenditure, under the direction of the President and in his discretion, for any purpose in connection with the carrying out of this Act.

SEC. 502. The right to alter, amend, or repeal this Act is hereby expressly reserved. If any provision of

this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Approved March 9th 1933 8.30 p. m.

On March 24, 1933, the President approved the following amendment to the emergency banking act providing for direct loans by Federal reserve banks to State banks and trust companies in certain cases:

[PUBLIC—No. 4—73D CONGRESS]

[H. R. 3757]

AN ACT

To provide for direct loans by Federal reserve banks to State banks and trust companies in certain cases, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title IV of the Act entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes," approved March 9, 1933, is amended by adding at the end thereof the following new section:

"Sec. 404. During the existing emergency in banking, or until this section shall be declared no longer operative by proclamation of the President, but in no event beyond the period of one year from the date this section takes effect, any State bank or trust company not a member of the Federal reserve system may apply to the Federal reserve bank in the district in which it is located and said Federal reserve bank, in its discretion and after inspection and approval of the collateral and a thorough examination of the applying bank or trust company, may make direct loans to such State bank or trust company under the terms provided in section 10 (b) of the Federal Reserve Act, as amended by section 402 of this Act: *Provided*, That loans may be made to any applying nonmember State bank or trust company upon eligible security. All applications for such loans shall be accompanied by the written approval of the State banking department or commission of the State from which the State bank or trust company has received its charter and a statement from the said State banking department or commission that in its judgment said State bank or trust company is in a sound condition. The notes representing such loans shall be eligible as security for circulating notes issued under the provisions of the sixth paragraph of section 18 of the Federal Reserve Act, as amended by section 401 of this Act, to the same extent as notes, drafts, bills of exchange, or bankers' acceptances acquired under the provisions of the Federal Reserve Act. During the time that such bank or trust company is indebted in any way to a Federal reserve bank it shall be required to comply in all respects to the provisions of the Federal Reserve Act applicable to member State banks and the regulations of the Federal Reserve Board issued thereunder: *Provided*, That in lieu of subscribing to stock in the Federal reserve bank it shall maintain the reserve balance required by section 19 of the Federal Reserve Act during the existence of such indebtedness. As used in this section and in section 304, the term 'State bank or trust company' shall



include a bank or trust company organized under the laws of any State, Territory, or possession of the United States, or the Canal Zone."

SEC. 2 (a). Section 304 of such Act of March 9, 1933, is amended by adding after the first sentence thereof the following new sentences: "Nothing in this section shall be construed to authorize the Reconstruction Finance Corporation to subscribe for preferred stock in any State bank or trust company if under the laws of the State in which said State bank or trust company is located the holders of such preferred stock are not exempt from double liability. In any case in which under the laws of the State in which it is located a State bank or trust company is not permitted to issue preferred stock exempt from double liability, or if such laws permit such issue of preferred stock only by unanimous consent of stockholders, the Reconstruction Finance Corporation is authorized, for the purposes of this section, to purchase the legally issued capital notes or debentures of such State bank or trust company."

(b) The second sentence of said section 304 is amended to read as follows: "The Reconstruction Finance Corporation may, with the approval of the Secretary of the Treasury, and under such rules and regulations as he may prescribe, sell in the open market the whole or any part of the preferred stock, capital notes, or debentures of any national banking association, State bank or trust company acquired by the corporation pursuant to this section."

Such section 304 is further amended by adding at the end thereof the following new sentence: (c) "As used in this section, the term 'State bank or trust company' shall include other banking corporations engaged in the business of industrial banking and under the supervision of State banking departments or of the Comptroller of the Currency."

Approved, March 24th, 1933.

On March 9, 1933, after the passage of the emergency banking act, the President issued the following proclamation continuing the bank holiday:

"BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

"A PROCLAMATION

"Whereas, on March 6, 1933, I, Franklin D. Roosevelt, President of the United States of America, by Proclamation declared the existence of a national emergency and proclaimed a bank holiday extending from Monday the 6th day of March to Thursday the 9th of March, 1933, both dates inclusive, in order to prevent the export, hoarding or earmarking of gold or silver coin, or bullion or currency, or speculation in foreign exchange; and

"Whereas, under the Act of March 9, 1933, all Proclamations heretofore or hereafter issued

by the President pursuant to the authority conferred by Section 5 (b) of the Act of October 6, 1917, as amended, are approved and confirmed; and

"Whereas, said national emergency still continues, and it is necessary to take further measures extending beyond March 9, 1933, in order to accomplish such purposes:

"Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, in view of such continuing national emergency and by virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by the Act of March 9, 1933, do hereby proclaim, order, direct and declare that all the terms and provisions of said Proclamation of March 6, 1933, and the regulations and orders issued thereunder are hereby continued in full force and effect until further proclamation by the President.

"In witness whereof I have hereunto set my hand and have caused the seal of the United States to be affixed.

"Done in the District of Columbia, this 9th day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirty-three, and of the Independence of the United States the One Hundredth and Fifty-seventh.

[SEAL]

"FRANKLIN D. ROOSEVELT

"By the President:

"CORDELL HULL

"Secretary of State"

On March 10, 1933, the President issued the following Executive order:

"EXECUTIVE ORDER

"By virtue of the authority vested in me by section 5 (b) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by the Act of March 9, 1933, and by section 4 of the said Act of March 9, 1933, and by virtue of all other authority vested in me, I hereby issue the following Executive order.

"The Secretary of the Treasury is authorized and empowered under such regulations as he may prescribe to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States, to perform any or all of their usual banking functions, except as otherwise prohibited.

"The appropriate authority having immediate supervision of banking institutions in

each State or any place subject to the jurisdiction of the United States is authorized and empowered under such regulations as such authority may prescribe to permit any banking institution in such State or place, other than banking institutions covered by the foregoing paragraph, to perform any or all of their usual banking functions, except as otherwise prohibited.

"All banks which are members of the Federal Reserve System, desiring to reopen for the performance of all usual and normal banking functions, except as otherwise prohibited, shall apply for a license therefor to the Secretary of the Treasury. Such application shall be filed immediately through the Federal reserve banks. The Federal reserve bank shall then transmit such applications to the Secretary of the Treasury. Licenses will be issued by the Federal reserve bank upon approval of the Secretary of the Treasury. The Federal reserve banks are hereby designated as agents of the Secretary of the Treasury for the receiving of application and the issuance of licenses in his behalf and upon his instructions.

"Until further order, no individual, partnership, association, or corporation, including any banking institution, shall export or otherwise remove or permit to be withdrawn from the United States or any place subject to the jurisdiction thereof any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury.

"No permission to any banking institution to perform any banking functions shall authorize such institution to pay out any gold coin, gold bullion or gold certificates except as authorized by the Secretary of the Treasury, nor to allow withdrawal of any currency for hoarding, nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933

"Every Federal reserve bank is authorized and instructed to keep itself currently informed as to transactions in foreign exchange entered into or consummated within its district and shall report to the Secretary of the Treasury all transactions in foreign exchange which are prohibited.

"FRANKLIN D. ROOSEVELT.

"The WHITE HOUSE,
"March 10, 1933."

On March 11, 1933, the President issued the following statement to the press:

Statement by the President "I am glad to be able to announce that technical difficulties which operated to delay the opening of banks, both State and national, have finally substantially been overcome by tireless work on the part of the officials of the Treasury and the Federal Reserve System, and that a definite program has been arranged consisting of successive steps by which banks throughout the country will be opened progressively on Monday, Tuesday, and Wednesday mornings.

"The Secretary of the Treasury will issue licenses to banks which are members of the Federal Reserve System, whether national bank or State, located in each of the twelve Federal reserve bank cities, to open Monday morning.

"So also the State authorities having supervision over State banks which are not members of the Federal Reserve System will be asked to permit any such State institutions located in any one of the twelve Federal reserve bank cities to open for business on Monday morning if in their judgment they deem it wise to do so.

"Under this progressive plan, banks located in any city having an active, recognized clearing house association, of which there are 250 cities, will receive licenses for reopening on Tuesday morning, and banks located elsewhere will receive their licenses permitting reopening for Wednesday.

"Time is thus afforded for the necessary shipments of currency provided under the Emergency Bank Act from reserve bank centers to clearing-house cities and banks in the smaller communities.

"There were enormous technical problems to be solved before these mechanics could be worked out and before the actual currency could be in the bank when the doors opened.

"The Constitution has laid upon me the duty of conveying the condition of the country to the Congress assembled at Washington. I believe I have a like duty to convey to the people themselves a clear picture of the situation at Washington itself whenever there is danger of any confusion as to what the Government is undertaking.

"That there may be a clear understanding as to just what has taken place during the last two days since the passage of this Act it is my intention, over the national radio networks, at ten o'clock Sunday evening, to explain clearly and in simple language to all of you just what

has been achieved and the sound reasons which underlie this declaration to you.

"The fact that banks will be opened under this plan does not mean that anyone should draw the inference that the banks opening Monday are in any different condition as to soundness from the banks licensed to open on Tuesday or Wednesday or any subsequent day."

On March 12, 1933, the President delivered Address by the over the radio, at 10 p. m., President the following address relative to the banking situation:

"I want to talk for a few minutes with the people of the United States about banking—with the comparatively few who understand the mechanics of banking, but more particularly with the overwhelming majority who use banks for the making of deposits and the drawing of checks. I want to tell you what has been done in the last few days, why it was done, and what the next steps are going to be. I recognize that the many proclamations from State capitals and from Washington, the legislation, the Treasury regulations, etc., couched for the most part in banking and legal terms, should be explained for the benefit of the average citizen. I owe this in particular because of the fortitude and good temper with which everybody has accepted the inconvenience and hardships of the banking holiday. I know that when you understand what we in Washington have been about I shall continue to have your cooperation as fully as I have had your sympathy and help during the past week.

"First of all, let me state the simple fact that when you deposit money in a bank the bank does not put the money into a safe deposit vault. It invests your money in many different forms of credit—bonds, commercial paper, mortgages and many other kinds of loans. In other words, the bank puts your money to work to keep the wheels of industry and of agriculture turning around. A comparatively small part of the money you put into the bank is kept in currency—an amount which in normal times is wholly sufficient to cover the cash needs of the average citizen. In other words, the total amount of all the currency in the country is only a small fraction of the total deposits in all of the banks.

"What, then, happened during the last few days of February and the first few days of March? Because of undermined confidence on the part of the public, there was a general

rush by a large portion of our population to turn bank deposits into currency or gold—a rush so great that the soundest banks could not get enough currency to meet the demand. The reason for this was that on the spur of the moment it was, of course, impossible to sell perfectly sound assets of a bank and convert them into cash except at panic prices far below their real value.

"By the afternoon of March 3 scarcely a bank in the country was open to do business. Proclamations temporarily closing them in whole or in part had been issued by the Governors in almost all the States.

"It was then that I issued the proclamation providing for the nation-wide bank holiday, and this was the first step in the Government's reconstruction of our financial and economic fabric.

"The second step was the legislation promptly and patriotically passed by the Congress confirming my proclamation and broadening my powers so that it became possible in view of the requirement of time to extend the holiday and lift the ban of that holiday gradually. This law also gave authority to develop a program of rehabilitation of our banking facilities. I want to tell our citizens in every part of the Nation that the National Congress—Republicans and Democrats alike—showed by this action a devotion to public welfare and a realization of the emergency and the necessity for speed that it is difficult to match in our history.

"The third stage has been the series of regulations permitting the banks to continue their functions to take care of the distribution of food and household necessities and the payment of pay rolls.

"This bank holiday, while resulting in many cases in great inconvenience, is affording us the opportunity to supply the currency necessary to meet the situation. No sound bank is a dollar worse off than it was when it closed its doors last Monday. Neither is any bank which may turn out not to be in a position for immediate opening. The new law allows the twelve Federal reserve banks to issue additional currency on good assets and thus the banks which reopen will be able to meet every legitimate call. The new currency is being sent out by the Bureau of Engraving and Printing in large volume to every part of the country. It is sound currency because it is backed by actual, good assets.

"A question you will ask is this: Why are all the banks not to be reopened at the same time? The answer is simple. Your Government does



not intend that the history of the past few years shall be repeated. We do not want and will not have another epidemic of bank failures.

"As a result we start to-morrow, Monday, with the opening of banks in the twelve Federal reserve bank cities—those banks which on first examination by the Treasury have already been found to be all right. This will be followed on Tuesday by the resumption of all their functions by banks already found to be sound in cities where there are recognized clearing houses. That means about 250 cities of the United States.

"On Wednesday and succeeding days banks in smaller places all through the country will resume business, subject, of course, to the Government's physical ability to complete its survey. It is necessary that the reopening of banks be extended over a period in order to permit the banks to make applications for necessary loans, to obtain currency needed to meet their requirements and to enable the Government to make common-sense check-ups.

"Let me make it clear to you that if your bank does not open the first day you are by no means justified in believing that it will not open. A bank that opens on one of the subsequent days is in exactly the same status as the bank that opens to-morrow.

"I know that many people are worrying about State banks not members of the Federal reserve system. These banks can and will receive assistance from member banks and from the Reconstruction Finance Corporation.

"These State banks are following the same course as the national banks except that they get their licenses to resume business from the State authorities, and these authorities have been asked by the Secretary of the Treasury to permit their good banks to open up on the same schedule as the national banks. I am confident that the State banking departments will be as careful as the National Government in the policy relating to the opening of banks and will follow the same broad policy.

"It is possible that when the banks resume a very few people who have not recovered from their fear may again begin withdrawals. Let me make it clear that the banks will take care of all needs and it is my belief that hoarding during the past week has become an exceedingly unfashionable pastime.

"It needs no prophet to tell you that when the people find that they can get their money—that they can get it when they want it for all legitimate purposes—the phantom of fear will soon be laid. People will again be glad to have their money where it will be safely taken care

of and where they can use it conveniently at any time. I can assure you that it is safer to keep your money in a reopened bank than under the mattress.

"The success of our whole great national program depends, of course, upon the cooperation of the public—on its intelligent support and use of a reliable system.

"Remember that the essential accomplishment of the new legislation is that it makes it possible for banks more readily to convert their assets into cash than was the case before. More liberal provision has been made for banks to borrow on these assets at the reserve banks and more liberal provision has also been made for issuing currency on the security of these good assets. This currency is not fiat currency. It is issued only on adequate security—and every good bank has an abundance of such security.

"One more point before I close. There will be, of course, some banks unable to reopen without being reorganized. The new law allows the Government to assist in making these reorganizations quickly and effectively and even allows the Government to subscribe to at least a part of new capital which may be required.

"I hope you can see from this elemental recital of what your Government is doing that there is nothing complex or radical in the process.

"We had a bad banking situation. Some of our bankers had shown themselves either incompetent or dishonest in their handling of the people's funds. They had used the money entrusted to them in speculations and unwise loans. This was, of course, not true in the vast majority of our banks, but it was true in enough of them to shock the people for a time into a sense of insecurity and to put them into a frame of mind where they did not differentiate, but seemed to assume that the acts of a comparative few had tainted them all. It was the Government's job to straighten out this situation and do it as quickly as possible—and the job is being performed.

"I do not promise you that every bank will be reopened or that individual losses will not be suffered, but there will be no losses that possibly could be avoided; and there would have been more and greater losses had we continued to drift. I can even promise you salvation for some, at least, of the sorely pressed banks. We shall be engaged not merely in reopening sound banks but in the creation of sound banks through reorganization.



"It has been wonderful to me to catch the note of confidence from all over the country. I can never be sufficiently grateful to the people for the loyal support they have given me in their acceptance of the judgment that has dictated our course, even though all our processes may not have seemed clear to them.

"After all, there is an element in the readjustment of our financial system more important than currency, more important than gold, and that is the confidence of the people.

"Confidence and courage are the essentials of success in carrying out our plan. You people must have faith; you must not be stampeded by rumors or guesses. Let us unite in banishing fear. We have provided the machinery to restore our financial system; it is up to you to support and make it work.

"It is your problem no less than it is mine. Together we can not fail."

On March 18, 1933, the President issued the following Executive order:

"EXECUTIVE ORDER

"By virtue of the authority vested in me by section 5(b) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by the Act of March 9, 1933, and by section 4 of the said Act of March 9, 1933, and by virtue of all other authority vested in me, I hereby issue the following Executive order.

"Whenever the appropriate authority having immediate supervision of any banking institution located in any State or place subject to the jurisdiction of the United States, which is a member of the Federal Reserve System and which has not been licensed by the Secretary of the Treasury to resume its usual banking functions, shall deem it necessary or advisable in order to conserve the assets of such banking institution for the benefit of the depositors or other creditors, such authority may, in accordance with the provisions of the applicable laws of such State or place, appoint such appropriate official as may be authorized under such laws to conserve the assets of such banking institution pending further disposition of its business as provided by such laws.

"This order shall not authorize any such member bank to reopen for the performance of usual and normal functions until it shall have received a license from the Secretary of the Treasury as provided in Executive Order of March 10, 1933.

"FRANKLIN D. ROOSEVELT.

"THE WHITE HOUSE,
"March 18, 1933."

The Secretary of the Treasury, under the authority conferred upon him by the President's proclamations declaring and continuing the bank holiday, issued the following regulations during the period March 6, 1933, to March 30, 1933:

REGULATION NO. 1 (MARCH 6)

All Federal reserve banks and all other banking institutions are authorized to make change by the exchange of currency and/or coin of various denominations for an exactly equal amount of currency and/or coin of other denominations, but no gold or gold certificates shall be paid out in making change.

REGULATION NO. 2 (MARCH 6)

All banking institutions may allow their customers free access to the safety deposit boxes and safes rented to such customers.

REGULATION NO. 3 (MARCH 6)

All banking institutions may upon request return intact and without restriction all cash, checks, and other items delivered for deposit or collection which were received after the last closing of business hours and have not been entered on the books of such banking institution.

REGULATION NO. 4 (MARCH 6)

All banking institutions may continue, in accordance with usual practice, to cash checks drawn on the Treasurer of the United States, provided that no gold or gold certificates shall be paid out.

REGULATION NO. 5 (MARCH 6)²

Any banking institution may accept payments in cash or any other form acceptable to it on account or in settlement of obligations payable at or to such institution.

REGULATION NO. 6 (MARCH 6)³

Any banking institution may handle and collect drafts or other documents in connection with the shipment, transportation or delivery of food or feed products, may pay out or permit the withdrawal of such amounts of currency as shall be necessary in the judgment of such banking institution in connection with such shipment, transportation or delivery of food or feed products, and may perform such other banking functions as may be essential to the shipment, transportation or delivery of food or feed products, provided, however, that no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.

REGULATION NO. 7 (MARCH 6)⁴

Deposits heretofore received by any banking institution pursuant to agreement or legislative authority providing for segregation and for repayment without restriction may be paid on demand. Any banking institution which was lawfully engaged in the business of

² See Interpretation No. 4 (Mar. 8), p. 15.

³ See Interpretations No. 1 (Mar. 7), No. 6 (Mar. 8), and No. 13 (Mar. 21), p. 15. Regulation No. 6 revoked by regulation No. 28 (Mar. 18), p. 14.

⁴ See regulations No. 15 (Mar. 8), p. 13; and No. 27 (Mar. 18), p. 14.

receiving deposits prior to March 6, 1933, may create special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal reserve banks or invested in obligations of the United States. Federal reserve banks may open special accounts on their books for their member banks and temporarily for nonmember banks and may receive in such special accounts the proceeds of new deposits received by such banking institutions. In making deposits with the Federal reserve bank pursuant to this regulation the depositing bank shall in the case of each deposit indicate to the Federal reserve bank by symbol or otherwise that the funds so deposited represent new deposits made under this regulation. Upon receipt of such deposits such Federal reserve bank shall credit the same in the special account of the depositing bank herein provided for and shall hold the same solely for repayment to such bank. Federal reserve banks shall permit the withdrawal of any part or all of such new deposits by the depositing bank without restriction provided that the depositing bank shall in such order or request for withdrawal indicate to the Federal reserve bank by symbol or otherwise that such withdrawal is to be made from such special account, provided however that no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.

REGULATION NO. 8 (MARCH 7)

Where settlement for checks charged by drawee institutions to the drawers' accounts on its books on or before March 4, 1933, is incomplete, settlement may be completed where such settlement does not involve the payment of money or currency.

REGULATION NO. 9 (MARCH 7)

Any banking institution may deliver to the person entitled thereto properly identified documents and securities held by such institution for safekeeping.

REGULATION NO. 10 (MARCH 7, AS AMENDED ON MARCH 10 BY ADDITION OF MATTER IN ITALICS)⁵

Any national or State banking institution may exercise its usual banking functions to such extent as its situation shall permit and as shall be absolutely necessary to meet the needs of its community for food, medicine, other necessities of life, for the relief of distress, for the payment of usual salaries and wages, for necessary current expenditures for the purpose of maintaining employment, and for other similar essential purposes. *Banking institutions may carry out such transactions as may be necessary to aid banking institutions in other communities to meet the necessities set forth above:* Provided, however, that (1) every precaution shall be taken to prevent hoarding or the unnecessary withdrawal of currency; (2) no State banking institution shall engage in any transaction under this regulation which is in violation of State or Federal law or of any regulation issued thereunder; (3) no national banking association shall engage in any transaction under this section which is in violation of any Federal law or of any order or regulation issued by the Comptroller of the Currency; and (4) no gold or gold certificates shall be paid out. Each banking institution and its directors and officers will be held strictly accountable for faithful compliance with the spirit and purpose as well as the letter of this regulation.

⁵ See Interpretations No. 2 (Mar. 7), No. 5 (Mar. 8), No. 7 (Mar. 8), No. 9 (Mar. 14), and No. 13 (Mar. 21), p. 15. Regulation No. 10 revoked by regulation No. 28 (Mar. 18), p. 14.

Federal reserve banks may carry on such functions as may be necessary to facilitate transactions authorized by this regulation.

In order to enable member banks of the Federal Reserve System to meet the needs of their respective communities to the extent authorized by this regulation Federal reserve banks may make advances to such member banks under the conditions set forth in section 10 (b) of the Federal reserve act as amended by the act of March 9, 1933, and in accordance with authority granted by the Federal Reserve Board.

In addition, in order to enable individuals, partnerships and corporations to meet their immediate pay roll requirements, Federal reserve banks may make temporary advances to such individuals, partnerships and corporations on their promissory notes secured by direct obligations of the United States in accordance with authority granted by the Federal Reserve Board.

REGULATION NO. 11 (MARCH 7)

Any bank having a branch in a foreign country may deposit collateral in the United States to secure advances to such branch in a foreign country, provided such transaction does not involve any transfer of credit from the United States to a foreign country, and any bank having a branch in an insular possession of the United States may deposit United States Government securities or other collateral for a similar purpose when under the President's proclamation advances of local currency in the insular possession may lawfully be made.

REGULATION NO. 12 (MARCH 7)⁶

Clearing house associations and other associations organized to provide an adequately secured medium of temporary exchange are hereby permitted to issue certificates against sound assets of banking institutions, such certificates to be deliverable by each institution to its creditors and depositors on a pro rata basis, provided, however, that no such certificates shall be issued before Friday, March 10, 1933, without the consent of the Secretary of the Treasury addressed to the clearing house or other association proposing to issue such certificates, and further provided that this permission may be revoked in the event that a national plan to meet the existing emergency is proposed by the Secretary of the Treasury if in his opinion the success of such plan would be inconsistent with the operation of the certificate plan.

REGULATION NO. 13 (MARCH 7)⁷

Any banking institution lawfully engaged in the business of acting as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity may continue to transact such business in the normal and usual manner; provided that in the conduct of said business, except as may be permitted by other regulations of the Secretary of the Treasury, such banking institution shall not pay out or permit the withdrawal of coin or currency nor withdraw any trust or fiduciary funds on deposit with any other department of the bank.

REGULATION NO. 14 (MARCH 7)

Federal reserve banks are authorized to conduct their normal and usual operations as fiscal agents of the United States in transactions pertaining to the exchange of obligations of the United States, such as

⁶ See statement by the Secretary of the Treasury, (Mar. 9), p. 16; and interpretation No. 11 (Mar. 16), p. 16.

⁷ Superseded by regulation No. 31 (Mar. 30), p. 14.



making exchange of denominations, exchanging coupon for registered bonds, and vice versa, receiving registered bonds for transfer and effecting C. P. D. transactions.

REGULATION NO. 15 (MARCH 8)

The permission granted in regulation No. 7, that deposits heretofore received by any banking institution pursuant to agreement or legislative authority providing for segregation and repayment without restriction may be paid on demand, includes any bank in which any such deposits have been redeposited by or on behalf of the receiving bank in accordance with such agreement or legislative authority.

REGULATION NO. 16 (MARCH 10)

All banking institutions are hereby authorized to take such steps and carry through such transactions as may be necessary to complete for their own account, or the account of their customers, payment on any subscriptions for Treasury bills of the United States for which payment was due on March 6, 1933.

REGULATION NO. 17 (MARCH 10)

Any banking institution may, when the owners consent thereto, pay checks issued prior to March 6, 1933, and received in due course of business by the drawee banking institution, by charging the amounts thereof to the accounts of the drawers and crediting such amounts to the accounts of such owners on the books of the drawee banking institution.

REGULATION NO. 18 (MARCH 11)

All banking institutions are hereby authorized to subscribe and pay for any United States Government obligations which may be offered for subscription and sale by the Secretary of the Treasury. Federal reserve banks may carry on such functions as may be necessary to facilitate such transactions as are authorized by this regulation.

All Federal reserve banks are authorized to redeem matured obligations of the United States and to cash matured coupons provided no gold or gold certificates shall be paid out.

REGULATION NO. 19 (MARCH 11)

Except as otherwise prohibited by law, banking institutions may exercise their normal and usual functions in permitting substitution for or release of collateral held by them, provided other collateral or cash of equal or greater value is received in exchange therefor.

REGULATION NO. 20 (MARCH 11)

All Federal reserve banks and their branches and agencies may open March 13, 1933, and may remain open for the performance of all usual and normal banking functions except as prohibited by the Executive order issued by the President on March 10, 1933, and any further orders or regulations hereafter issued.

REGULATION NO. 21 (MARCH 11)

Banking institutions which are not members of the Federal Reserve System or organized under the laws of the United States and which are not under the immediate supervision of any State authority may, on and after March 13, 1933, carry on their normal and usual functions, except as otherwise prohibited and except

that no such institution shall pay out any gold coin, gold bullion or gold certificates, unless authorized by the Secretary of the Treasury, nor allow withdrawal of any currency for hoarding, nor engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for fulfillment of contracts entered into prior to March 6, 1933.

REGULATION NO. 22 (MARCH 11, AS AMENDED MARCH 13 BY ADDITION OF MATTER IN ITALICS)

All Federal land banks, Federal intermediate credit banks, joint stock land banks, Federal home loan banks, *corporations organized under section 25(a) of the Federal reserve act*, regional agricultural credit corporations and the Reconstruction Finance Corporation are hereby permitted to open at 9 o'clock, a. m., Monday, March 13, 1933, to perform their usual banking functions except to the extent prohibited by the Executive order of the President of the United States, issued March 10, 1933, by Federal or State law, or as may hereafter be limited or prohibited by regulations promulgated by the Secretary of the Treasury.

This permission, as to each of the foregoing banking institutions, may be revoked in whole or in part by the Secretary of the Treasury at any time, and is granted as to each such institution upon the express condition that such institution shall deliver, within thirty days from the date hereof, to the Treasurer of the United States or to a Federal reserve bank or a Federal reserve branch bank of the district in which it is located, all gold coin, gold bullion and gold certificates owned by it, and receive payment in credit or in other forms of coin or in currency.

REGULATION NO. 23 (MARCH 12)

No banking institution shall permit any withdrawal by any person when such institution, acting in good faith, shall deem that the withdrawal is intended for hoarding. Any banking institution, before permitting the withdrawal of large or unusual amounts of currency, may require from the person requesting such withdrawal a full statement under oath of the purpose for which the currency is requested.

REGULATION NO. 24 (MARCH 12)

All banking institutions may cash official drafts drawn upon the Secretary of State for payment of salaries, traveling and other contingent expenses but not for personal account, and remit the amounts thereof to the banks from which the drafts are received, provided that no gold or gold certificates shall be paid out.

REGULATION NO. 25 (MARCH 13)⁸

Pending the determination by the Treasury Department of a suitable procedure for licensing the delivery of gold for use in trade, profession or art, Federal reserve banks are hereby authorized to deliver upon request therefor gold in amounts deemed by such bank to be reasonably required for legitimate and customary uses in trade, profession or art, provided such request is accompanied by affidavit of the person requesting such gold stating the amount of unmanufactured gold on hand and the facts making it necessary to obtain such gold for the purpose of maintaining employment.

⁸Revoked by gold regulations of Apr. 29, 1933.

17. All banks licensed to open for usual and normal functions are permitted to carry out any transaction necessary to complete the delivery of any gold authorized by any Federal reserve bank to be delivered in accordance with such request.

REGULATION NO. 26 (MARCH 13)

All banking institutions may issue drafts transferring credits from any place in the United States to any other place in the United States and from any place in the United States to any place in a foreign country in connection with payments for domestic and foreign patent, trade-mark and design application fees, and in payment for domestic and foreign patent and trade-mark taxes and renewals. No gold or gold certificates shall be paid out, withdrawn, or exported under this regulation.

REGULATION NO. 27 (MARCH 18; ISSUED UNDER THE AUTHORITY OF THE EXECUTIVE ORDER OF MARCH 10 AS WELL AS UNDER THE PROCLAMATIONS REFERRED TO ON PAGE 11) ⁹

Any State banking institution which is a member of the Federal Reserve System and which is not licensed by the Secretary of the Treasury to reopen for the performance of usual banking functions may, with the approval of the appropriate State authority having immediate supervision of such banking institution, permit withdrawals by depositors and make payments to creditors of such percentage of the amounts due to them (not exceeding 5 per cent) as it may determine, provided that at or before the time of such withdrawal or payment it shall set aside and make available for such purpose a fund for the benefit of and sufficient to pay to all depositors and creditors the percentage so determined.

This regulation shall not in any way affect any right created by Regulation No. 7 nor limit or restrict any payment thereby authorized.

Any right to authorize withdrawals or payments under the terms of this regulation shall terminate upon the appointment of any conservator, receiver or other appropriate State official taking charge of the affairs of such banking institutions.

REGULATION NO. 28 (MARCH 18) ¹⁰

After the close of business on March 18, 1933, Treasury regulation No. 6 and Treasury regulation No. 10, as amended, shall be without force or effect to authorize any banking transaction therein referred to.

REGULATION NO. 29 (MAR. 21)

Any banking institution which is a member of the Federal Reserve System and is not licensed to perform usual banking functions may rediscount or pledge with another banking institution renewals of notes which were previously rediscounted or pledged with such other banking institution.

REGULATION NO. 30 (MAR. 23)

Banking institutions which are members of the Federal Reserve System and of which actual possession and control have been taken (a) by conservators appointed pursuant to the act of March 9, 1933, or (b) by appropriate State officials appointed pursuant to State law, as permitted by the President's Executive Order of March 18, 1933, are permitted to transact such limited banking functions as may be authorized in accordance with law by the Comptroller of the Cur-

⁹ See interpretation No. 12 (Mar. 20), p. 15.

¹⁰ See interpretation No. 13 (Mar. 21), p. 15.

rency in the case of national banks, or by the appropriate State officials, in the case of State member banks; provided, however, that no such banking institution shall reopen for the performance of its usual and normal functions until it shall have received a license from the Secretary of the Treasury.

This regulation shall not authorize any transaction with respect to the export or paying out of gold or gold certificates, withdrawal of currency for hoarding or transactions in foreign exchange prohibited or restricted by the Executive order of March 10, 1933.

REGULATION NO. 31 (MAR. 30) ¹¹

Any banking institution which is a member of the Federal Reserve System and is not licensed to perform usual banking functions, but which is duly authorized to engage in the business of acting as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity, may transact such business in the normal and usual manner and may make payments on account of the principal or income of trust or other fiduciary funds to the persons entitled thereto; provided, that, except to the extent permitted by other emergency banking regulations, no such banking institution shall withdraw or pay out any trust or other fiduciary funds on deposit with any other department of such banking institution or make any other payment in connection with any trust or other fiduciary funds which would operate to discharge, as a whole or in part, any indebtedness, as distinguished from any trust or other fiduciary duty, of such banking institution.

This regulation supersedes emergency banking regulation No. 13 of March 7, 1933, which is hereby revoked.

REGULATION NO. 32 (MAR. 30)

Any State bank which is a member of the Federal Reserve System, and is not licensed by the Secretary of the Treasury to perform usual banking functions, may permit withdrawals of deposits which are lawfully secured by collateral; provided, that such withdrawals are (a) permissible under applicable law, (b) duly authorized by the Board of Directors of such bank, upon such terms with respect to the release of collateral as will fully protect all depositors and other creditors against the creation of any preferences, and (c) approved by the appropriate State authority having supervision of such bank.

Any such bank is authorized to carry on such usual banking functions as may be essential to allow the withdrawals permitted by this regulation, subject to the provisions and restrictions above set forth and except as otherwise prohibited.

SUPPLEMENTARY REGULATION APPLICABLE TO FEDERAL RESERVE BANKS (MARCH 7)

Under the authority conferred upon him by the President's proclamation of March 6, 1933, declaring a bank holiday, the Secretary of the Treasury on March 7, 1933, also issued the following regulation:

Each Federal reserve bank may (1) make available to its member banks which, in the judgment of the Federal reserve bank, are complying strictly with the spirit and purpose as well as the letter of the regulations

¹¹ Supersedes regulation No. 13 (Mar. 7), p. 12.



issued by the Secretary of the Treasury pursuant to the President's proclamation declaring a bank holiday, such limited amounts of coin and/or currency (other than gold or gold certificates) as shall be absolutely necessary in order to enable such member banks to exercise the restricted functions permitted by such regulations, (2) extend to each such member bank such limited amounts of discounts, advancements and accommodations as shall be absolutely necessary for the exercise of such restricted functions, and (3) make transfers of credit on its books for such restricted purposes between the accounts of such member banks and/or nonmember clearing banks which, in the judgment of the Federal reserve bank, are complying strictly with the spirit and purpose as well as the letter of such regulations; provided, however, that before granting any such discounts, advancements or accommodations or making such limited payments of coin and/or currency, the Federal reserve bank shall first require the member bank, (a) to inform the Federal reserve bank of the amounts of coin and currency which it has on hand, (b) to inform the Federal reserve bank of the circumstances giving rise to the need for additional coin and/or currency, and (c) to deliver to the Federal reserve bank in exchange for other forms of coin and/or currency or for credit on its books all gold and gold certificates held by such member bank in its own right.

The following are interpretations issued by the Secretary of the Treasury from March 7, 1933, to March 21, 1933, of certain of the provisions of the regulations set forth above:

INTERPRETATION NO. 1 (MARCH 7)

You are authorized to inform all banking institutions and others concerned that the term "food or feed products" in regulation No. 6 under the President's proclamation promulgated March 6 may be interpreted to include livestock on the way to slaughter.

INTERPRETATION NO. 2 (MARCH 7)

Regulation No. 10 of March 7 under the President's proclamation of March 6 is held to authorize payments on account of pensions, workmen's compensation disability insurance, relief and unemployment.

INTERPRETATION NO. 3 (MARCH 7)¹²

The term "other corporations, partnerships, associations or persons engaged in the business of receiving deposits, making loans," as used in the President's proclamation of March 6 declaring a bank holiday, is held to include brokers, pawn brokers, industrial loan companies, mortgage loan companies, chattel loan companies, personal finance companies, automobile finance companies and all other persons, firms and corporations engaged in the business of making loans of any kind, secured or unsecured.

INTERPRETATION NO. 4 (MARCH 8)

Regulation No. 5, dated March 6, 1933, is not to be interpreted as permitting any banking institutions to accept payment of any obligation not solely owned by it in any form which is not authorized by the person entitled to the proceeds.

¹² See interpretation No. 10 (Mar. 14), p. 15.

INTERPRETATION NO. 5 (MARCH 8)

Regulation No. 10 issued under the President's proclamation is interpreted to authorize payments for fertilizer and for vegetable and agricultural seeds for spring planting, where such payments are absolutely necessary and where the seed and/or fertilizer are for immediate use.

INTERPRETATION NO. 6 (MARCH 8)

"Food or feed products" as used in regulation No. 6 may be construed as including whole grain if such grain is intended for processing or consumption in the immediate future.

INTERPRETATION NO. 7 (MARCH 8)¹³

Release of funds for purchase of cotton where absolutely necessary to maintain operation is interpreted as "necessary current expenditures for the purpose of maintaining employment and for other similar essential purposes."

INTERPRETATION NO. 8 (MARCH 8)

Regarding release of funds for purchase of internal revenue stamps in connection with cigar manufacturing. Cigar manufacturing company should be referred to collector of internal revenue.

INTERPRETATION NO. 9 (MARCH 14)

Regulation No. 10 issued under the President's proclamation is interpreted to authorize payments for nursery stock where such payments are absolutely necessary to prevent destruction of stock in transit on March 6, 1933, or prepared for and awaiting shipment on March 6, 1933, under bona fide commitments.

INTERPRETATION NO. 10 (MARCH 14)

The term "mortgage loan companies," as used in interpretation No. 3, is interpreted to include all corporations whose principal business consists of the investment in, sale and purchase of real estate mortgages and mortgage certificates guaranteed by such corporations.

INTERPRETATION NO. 11 (MARCH 16)

Regulation No. 12 is not to be construed as permitting a banking institution, open for normal and usual functions under license of the Secretary of the Treasury, to require depositors to accept clearing-house certificates or other evidences of claims against assets for all or any part of any withdrawal requested.

INTERPRETATION NO. 12 (MARCH 20)

Regulation No. 27 is interpreted to permit any banking institution acting thereunder to carry on such usual banking functions as may be essential to permit restricted withdrawals and payments authorized by such regulation, subject to all of the provisions and restrictions therein contained and except as otherwise prohibited.

INTERPRETATION NO. 13 (MARCH 21)

Regulation No. 28 is held not to prohibit the honoring of checks or drafts drawn on or before March 18, 1933, under the terms of regulation No. 6 or regulation No. 10, as amended, subject to all the provisions and restrictions contained in such regulations and except as otherwise prohibited.

¹³ See regulation No. 10, as amended, p. 12.

During the period March 7, 1933, to March 31, 1933, the following statements, in addition to statements containing regulations and interpretations, were issued by the Secretary of the Treasury:

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 7

"In order to facilitate the prompt dissemination of information regarding, and interpretation of, regulations issued by the Secretary of the Treasury pursuant to the President's proclamation, dated March 6, 1933, declaring a bank holiday, it is requested that all inquiries for information regarding, and interpretation of, any of such regulations coming from banks, banking institutions and individuals be made direct to the Federal reserve bank in their district. Unless such requests are covered by interpretations previously issued by the Secretary of the Treasury, the Federal reserve banks will secure such interpretations from the Secretary of the Treasury. All requests for any special permission or consent required by the regulations should be made in accordance with such regulations."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 9

"The President has to-day urged the immediate enactment of legislation dealing with the existing banking situation. It appears that prompt action will make banking facilities and an adequate supply of currency available. Notwithstanding the expected early opening of banks, the Secretary of the Treasury interposes no objection to the issuance of clearing house certificates or other evidences of claims against assets of banking institutions, in communities where local conditions make such action necessary. The regulation issued by the Secretary March 7, 1933, remains effective, granting permission to clearing house associations and other associations organized to provide an adequately secured medium of temporary exchange to issue certificates against sound assets of banking institutions, such certificates to be deliverable by each institution to its creditors and depositors on a pro rata basis."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 9

"The emergency banking legislation passed by the Congress to-day is a most constructive

¹ See regulation No. 12, p. 12.

step toward the solution of the financial and banking difficulties which have confronted the country. The extraordinary rapidity with which this legislation was enacted by the Congress heartens and encourages the country.

"This legislation makes possible the opening of banks upon a sound basis, backed by an adequate supply of currency. Through this law the banks which will open will be placed in a position to meet all demands. This assurance should restore confidence and create the foundation for a forward movement in business activities.

"It will be the policy of the Treasury to permit as rapidly as possible the opening of the sound banks. There are, of course, many thousands of such banks which will promptly be restored to the performance of their normal functions.

"The Treasury has already taken steps to secure information through proper authorities as to the condition of the various banks of the country and immediately invites from the banks applications for reopening.

"While much information has already been assembled, the completion of the information and of the arrangements of the banks for resuming their functions takes some time. It has therefore been decided not to authorize any reopenings before Saturday, March 11. It is obvious that it will not be possible to act upon all of the applications even by Saturday. Regulations governing reopenings and also other subjects governed by the legislation will immediately be published."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 10

"Executive order or regulation will issue shortly directing all banks which are members of the Federal reserve system, desiring to reopen for the performance of all usual and normal banking functions, except as otherwise prohibited, to apply for a license to the Secretary of the Treasury, applications to be filed with the Federal reserve bank in the appropriate district. The appropriate authority having immediate supervision of banking institutions in each State will be authorized under such regulations as such authority may prescribe to permit any banking institution in such State or place, other than member banks of the Federal Reserve System to perform any or all of their usual banking functions, except as otherwise prohibited."



STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 10

"To the superintendents of banks of each State:

"All banks of the country are now prohibited under the proclamation of March 9 of the President from conducting any banking business, except as specifically authorized by rule, regulation or license of the Secretary of the Treasury issued under that proclamation. In view of the passage of the emergency bank bill by Congress yesterday, and under the terms of that bill, and section 5 of the act of October 6, 1917, as amended by that bill, the Secretary of the Treasury will be authorized to permit any sound bank which is a member of the Federal Reserve System, whether State or national, to reopen for business as promptly as possible. It is the intention of the Secretary of the Treasury, however, to permit no member bank to reopen at any time on a full 100 per cent basis unless or until the Secretary is satisfied that such bank is a sound going institution. Any member bank not clearly within this category will not be opened unless or until further investigation discloses that it is a sound going institution, or unless or until a reorganization of some character will permit the bank to be classified as a sound going institution.

"Any member bank not opened 100 per cent under this procedure will be permitted to continue to perform only such specific transactions as are now authorized or may hereafter be authorized by specific regulation or license of the Secretary of the Treasury.

"In view of the fact that neither the Treasury nor the Federal reserve authorities have sufficient information upon which to consider applications for reopening by such State banks as are not members of the Federal Reserve System, the President will by decree authorize the appropriate State authorities in each State to give licenses to banks under their jurisdiction other than members of the Federal Reserve System, to open for the usual normal business, or in their judgment, and under the terms of the Presidential Proclamation, to permit of such reopening under such restrictions and limitations as they in their judgment may deem wise. It is to be expected, however, that State superintendents in granting licenses under this authority will take under consideration in determining their own policy the general principle to be adopted by the Treasury as respects member banks that in the interests of the depositors and of the country as a whole, only sound institutions will be permitted to carry on all of their usual functions to the end that no bank shall be reopened for business on any

basis that will run the risk of being forced to close again because of demands which it is not in a position to satisfy."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 10

"Under the terms of the act of March 9, 1933, immediate action has been taken by the President and the Secretary of the Treasury which will make possible the resumption of banking operations in substantial volume at a very early date. Pending such resumption the vital needs of communities must be met. Attention of all banking institutions is called to Regulation 10 which is still in force and which as amended provides for cooperation between banks in different communities * * *." [See Regulation No. 10, p. 12.]

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 10

"The present restrictions on gold will not prevent gold being available for all normal uses in the industrial arts. Method of distribution for these purposes will be determined by the Treasury."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 10

"The Federal Reserve Board this morning voted to authorize the Federal reserve banks under the terms of section 403 of the emergency bank act to make advances to-morrow for payroll purposes to individuals, firms, or corporations on their notes secured by Government securities. The Secretary of the Treasury has issued a regulation according to the terms of the President's proclamation permitting the Federal reserve banks to carry on this business with the public.

"Accordingly, the Federal reserve banks will be open to-morrow for the purpose of making loans secured by direct obligations of the Government, as well as to conduct such other transactions with their member banks as may be necessary to enable member banks to carry out the purposes of regulation No. 10, as amended."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 11

"To the superintendents of banks of each State:

"As announced by the President this afternoon, a definite program for the reopening of banks throughout the country has been determined by the Secretary of the Treasury. In accordance with this program, the Secretary of the Treasury is prepared upon application

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through Federal reserve banks to issue to banking institutions which are members of the Federal Reserve System, whether national or State, located in each of the 12 Federal reserve bank cities licenses to open Monday morning. The Secretary of the Treasury will not issue licenses to any member bank, State or national, located outside those 12 cities to open before Tuesday.

"State authorities having supervision over banking institutions located at such cities which are not members of the Federal Reserve System are requested to cooperate by permitting such banking institutions to open for business on Monday morning, in all cases where they find them qualified to do so on the basis indicated in previous telegram of March 10.¹⁵ The Secretary of the Treasury will not permit any member bank, State or national, to open in any such Federal reserve city unless opened for normal business on an unrestricted basis, except so far as affected by legal contracts between the banks and depositors with respect to withdrawals or notice of withdrawals.

"In accordance with the announcement of the President, the Secretary of the Treasury is prepared upon application through the Federal reserve banks to issue licenses to reopen on Tuesday morning to Federal reserve member banks located in any city having an active and recognized clearing-house association, and upon like application licenses to member banks located elsewhere for reopening on Wednesday morning. As previously stated, however, the Secretary of the Treasury will not permit the reopening of member banks, State or national, on any of these days except on an unrestricted basis, as above indicated. It must be understood that the restrictions in the President's proclamation against the payment of gold, gold certificates or bullion or the payment of currency for hoarding purposes and foreign exchange transactions will apply to all banking institutions, member and nonmember, State or national, until further notice."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 11

"Normal banking is now in sight. It will come as rapidly as the Treasury can authorize banks to proceed.

"The people of every community will learn from their local institutions when the respective Treasury permits have been granted. Therefore there will not be, for the present at least, any general list of the licenses issued from the

¹⁵ See statement to the superintendents of banks of each State, p. 17.

United States Treasury. To compile and check such a list would be a rather lengthy process, and speed in giving the people all the banking facilities possible and safe takes precedence over anything else.

"The purpose of the banking and financial program now in process under the Secretary of the Treasury is to restore to the country as promptly as possible adequate banking facilities and furnish an ample and sound currency, and restore confidence. Such a program is made possible by the new emergency banking act passed by Congress March 9.

"This act confirms and continues the authority of the President, through such agencies as he may designate, to exercise control over banking for the protection and benefit of depositors and of all users of banking facilities. By amendments to the Federal reserve act it is made possible for Federal reserve banks to make loans direct to corporations, firms and individuals on their notes secured by direct obligations of the United States Government. There are approximately \$11,000,000,000 of such securities outstanding with the public other than with banking institutions. In order to enable the reopened banks to secure currency sufficient to meet demands, Federal reserve banks are authorized to lend to any member bank, regardless of its size, on sound assets. To provide adequate Federal reserve bank currency to satisfy the possible demands under this program, Federal reserve banks are authorized to issue Federal reserve bank notes, not only against Government securities, but also against any member bank note secured by sound assets.

"With the enlarged potential supply of currency it is possible to proceed with the program of permitting banks to open. There is no occasion for such banks to experience any lack of currency, and there should be an end of any fear on that score of depositors in reopened banks. An Executive order forbids all banks to permit withdrawals of currency for hoarding purposes.

"It is the intention of the Secretary of the Treasury to proceed as rapidly as possible under the President's proclamation with the licensing of the reopening of banks, both national and State, which are members of the Federal Reserve System. The appropriate State authorities may permit the reopening of the State institutions. An embargo is imposed upon gold payments, except under license, to prevent gold hoarding.

"This embargo does not mean that every individual who happens to have one or a number of gold certificates in his roll of currency is



to be classified as a hoarder and be subjected to invidious publicity or other penalty. The provision is aimed at those who continue to retain quantities of gold and thereby hinder the Government's plans for a restoration of public confidence.

"Already from every quarter of the Nation is reported a large and steady current of gold flowing back to the banks, and the people apparently will be prompt in depositing their funds and thereby relieving themselves of the inconvenience and danger of keeping about them large amounts of money."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 12

"The first duty of the banks reopening under license of the Secretary of the Treasury for the performance of their usual functions is to see that the primary needs of the people for funds for the necessities of life and for normal business undertakings are met. Accordingly withdrawals for hoarding have been prohibited and the Secretary of the Treasury suggests that until more normal conditions have been established transfers of funds by banks or their customers be limited to necessary purposes."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 13

"Banking institutions which have not yet been permitted to reopen for normal and usual functions are still permitted to continue to carry on the limited activities specified by regulations Nos. 1 to 19."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 13

"Pending determination by the Treasury Department upon a suitable procedure for licensing the delivery of gold reasonably required for legitimate and customary use in trade, profession or art, all requests for the delivery of gold for such purposes should be submitted to the Federal reserve bank of the district, accompanied by an affidavit as to the amount of unmanufactured gold now on hand and the facts making it necessary to obtain the additional gold requested for the purpose of maintaining employment. Accurate records must be kept of the disposition of all gold which may be released."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 13

"Proceeding under the new bank conservation act, the Comptroller of the Currency has

appointed conservators for the First National Bank of Detroit and the Guardian National Bank of Commerce of Detroit. This course will permit the operation of the institutions for the purpose of receiving deposits to be segregated and kept in cash or invested in obligations of the United States or deposited with the Federal reserve bank, and permits the conservator to set aside and make available for withdrawal by depositors and payment to other creditors on a ratable basis such amounts as in the opinion of the Comptroller may safely be used for this purpose.

"The placing of these banks under conservators also gives time for the development of a satisfactory permanent plan for adequate banking facilities for Detroit. A number of plans have been discussed and much work has been done, but up to date there has not been a general agreement as to the course which will be most advantageous for this city. The Government of the United States is anxious to cooperate in the carrying out of such plan as soon as agreed upon."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 13

"Responding to inquiries to-day as to what facilities are available for enabling State banks which are not members of the Federal Reserve System to obtain currency to meet their needs, Secretary of the Treasury Woodin called attention to the statement of the President, in his radio talk on March 12, that 'these banks can and will receive assistance from member banks and from the Reconstruction Finance Corporation.' The Secretary also pointed out that Federal reserve banks are authorized to make advances to individuals, partnerships and corporations on their promissory notes, for periods not exceeding 90 days, secured by direct obligations of the United States, and nonmember banks may avail themselves of this privilege. The Federal reserve banks also are authorized, he stated, to rediscount for member banks, with their indorsement, eligible and acceptable paper acquired from and bearing the signature or indorsement of nonmember banks; and to make advances to member banks secured by other paper acquired from nonmember banks.

"The Secretary said that he understands that it is the purpose and desire of the Reconstruction Finance Corporation and the Federal reserve banks to be as helpful as possible in meeting the needs of the present situation."



STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 14

"In response to many inquiries as to the significance of the appointment of conservators to banks of high repute I wish to say that there is no deduction to be made that such banks are necessarily in difficulties. There are a lot of complications, some of them concerning affiliate enterprises, which make it impractical for banks to open to the full extent. It is for the purpose of insuring that the banks will be put in apple-pie order, pending reorganization or other necessary processes that conservators in many cases are named.

"Moreover this method makes it possible that the bank so circumstanced will be able to continue to render service, as for example the receiving of deposits to be segregated and kept in cash or invested in Government bonds and such like securities. It also enables the conservator to set aside and make available for withdrawal by depositors and payment to other creditors on a ratable basis such amounts as in his opinion it is safe to use for this purpose."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 16

"Passing upon applications of member banks to reopen for normal banking functions has taxed the personnel of the Treasury and of the Office of the Comptroller of the Currency. While every possible effort has been made to act upon all applications, delay in some cases has been found to be inevitable. In some cases, also, steps are being taken which as soon as completed will make it possible for reopening to be licensed. I therefore wish to direct especial attention to the statement of the President in his radio address of last Sunday:

"Let me make it clear to you that if your bank does not open the first day you are by no means justified in believing that it will not open. A bank that opens on one of the subsequent days is in exactly the same status as the bank that opens tomorrow."

"Additional licenses will be issued from time to time and the public should understand that banks hereafter licensed to be opened for normal functions are to be regarded in the same way as if it had been possible to issue the license by to-day."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 16

"A number of inquiries have been made at the Treasury Department as to whether a pro-

hibition exists upon proper commercial dealings in silver during the banking emergency.

"No regulations have been issued restricting export or other transactions in silver, except for limitations affecting withdrawals by depositors for hoarding and restrictions on banks not permitted to reopen."

STATEMENT BY THE SECRETARY OF THE TREASURY,
MARCH 31

"Up to the close of business on Saturday, March 25, 1933, 265 national banks with total deposits of approximately \$350,000,000 have been reorganized or strengthened so that they could be reopened under license to perform their full functions and that the deposits again become available to depositors. These results during the 10 days from March 15 indicate the work which is actively in process in the restoration of banks which were unable to open on the date originally set and the constructive response being made by stockholders and depositors. As additional banks have been reopened they have assumed on a sound basis the performance of the same full functions as the banks opened on the first days set."

On March 8, the Federal Reserve Board requested the Federal reserve banks to "prepare and forward to the board as soon as possible after March 13, 1933, as complete a list as can be made from information you are able to obtain of the names and addresses of all persons who have withdrawn gold from your bank or a member bank in your district since February 1, 1933, and who have not redeposited it in a bank on or before March 13, 1933," and authorized them to give publicity to the request. The board also advised them that it had no objection to obtaining similar information from nonmember banks and information regarding withdrawals prior to February 1. On March 9, the board indicated that the request of March 8 applied "to both gold coin and gold certificates." Subsequently, on March 12 and March 18, the board extended to March 17 and March 27, respectively, the final date as of which the lists referred to were to be compiled.



The following orders were issued by the Secretary of the Treasury, with the approval of the President, permitting banking institutions in certain territories and insular possessions of the United States to perform all usual banking functions:

THE CANAL ZONE (MARCH 6, 1933)

Under and by virtue of the authority conferred upon the Secretary of the Treasury, by the proclamation of the President of the United States of America issued March 6, 1933, declaring a bank holiday from Monday, March 6, to Thursday, March 9, 1933, inclusive, and wherein the Secretary of the Treasury was authorized and empowered with the approval of the President to permit, under proper regulations, certain banking institutions to perform any and all of the usual banking functions, and it appearing

That Lieut. Col. Julian L. Schley, Governor of the Panama Canal, Balboa Heights, Canal Zone, has advised, after consultation with the manager of the single bank operating in the Canal Zone (which is a branch of the Chase National Bank of New York, located in Cristobal), that there is no necessity for the application of the terms of the proclamation to such bank operating in the Canal Zone, and that such bank is in a position and desires to continue to transact its banking business as usual, it is, therefore,

Ordered, That the banking institution, as defined in the proclamation of the President of the United States, operating and carrying on business in the Canal Zone, be, and the same hereby is, authorized and permitted to perform all its usual banking functions during the period as ordered in the proclamation of the President of the United States and any and all extensions thereof, and/or until the further order of the undersigned in the premises, provided, however, that no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.

THE ISLAND OF GUAM (MARCH 6, 1933)

Under and by virtue of the authority conferred upon the Secretary of the Treasury, by the proclamation of the President of the United States of America issued March 6, 1933, declaring a bank holiday from Monday, March 6, to Thursday, March 9, 1933, inclusive, and wherein the Secretary of the Treasury was authorized and empowered, with the approval of the President, to permit, under proper regulations, certain banking institutions to perform any and all of the usual banking functions, and it appearing

That Capt. E. S. Root, Governor of Guam, has advised that local conditions in the Island justify the Secretary of the Treasury in exempting the banking institutions therein located from the operation of the proclamation of the President of the United States, and that such banks are in a position and desire to continue to transact their banking business as usual, it is, therefore,

Ordered, That any and all banking institutions, as defined in the proclamation of the President of the United States, operating and carrying on business in the Island of Guam, be, and the same hereby are, authorized and permitted to perform all their usual banking functions during the period as ordered in the proclamation of the President of the United States and

any and all extensions thereof, and/or until the further order of the undersigned in the premises, provided, however, that no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.

THE ISLANDS OF AMERICAN SAMOA (MARCH 6, 1933)

Under and by virtue of the authority conferred upon the Secretary of the Treasury, by the proclamation of the President of the United States of America issued March 6, 1933, declaring a bank holiday from Monday, March 6, to Thursday, March 9, 1933, inclusive, and wherein the Secretary of the Treasury was authorized and empowered, with the approval of the President, to permit, under proper regulations, certain banking institutions to perform any and all of the usual banking functions, and it appearing

That Capt. George B. Landenberger, Governor of American Samoa, has advised that local conditions in the Islands justify the Secretary of the Treasury in exempting the banking institutions therein located from the operation of the proclamation of the President of the United States, and that such banks are in a position and desire to continue to transact their banking business as usual, it is, therefore,

Ordered, That any and all banking institutions, as defined in the proclamation of the President of the United States, operating and carrying on business in the Islands of American Samoa, be, and the same hereby are, authorized and permitted to perform all their usual banking functions during the period as ordered in the proclamation of the President of the United States and any and all extensions thereof, and/or until the further order of the undersigned in the premises, provided, however, that no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.

THE PHILIPPINE ISLANDS (MARCH 6, 1933)

Under and by virtue of the authority conferred upon the Secretary of the Treasury, by the proclamation of the President of the United States of America issued March 6, 1933, declaring a bank holiday from Monday, March 6, to Thursday, March 9, 1933, inclusive, and wherein the Secretary of the Treasury was authorized and empowered with the approval of the President to permit, under proper regulations, certain banking institutions to perform any and all of the usual banking functions, and it appearing

That the Hon. Theodore Roosevelt, jr., Governor General of the Philippine Islands, has advised, after consultation with the managing officials of all banks, both local and foreign, located in the Philippine Islands, together with certain prominent business men of the community and certain insular officials, that there is no present necessity for the application of the terms of the proclamation to the banks operating in the Philippine Islands, and that such banks are in a position and desire to continue to transact their banking business as usual, it is, therefore,

Ordered, That any and all banking institutions, as defined in the proclamation of the President of the United States, operating and carrying on business in the Philippine Islands, be, and the same hereby are, authorized and permitted to perform all their usual banking functions during the period as ordered in the proclamation of the President of the United States and any and all extensions thereof, and/or until the further order of the undersigned in the premises, provided, however, that no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.



THE VIRGIN ISLANDS (MARCH 6, 1933)

Under and by virtue of the authority conferred upon the Secretary of the Treasury, by the proclamation of the President of the United States of America issued March 6, 1933, declaring a bank holiday from Monday, March 6, to Thursday, March 9, 1933, inclusive, and wherein the Secretary of the Treasury was authorized and empowered with the approval of the President to permit, under proper regulations, certain banking institutions to perform any and all of the usual banking functions, and it appearing

That the Hon. Boyd J. Brown, Acting Governor of the Virgin Islands, has advised that there is no necessity for the application of the terms of the proclamation to the banks operating in the Virgin Islands, and that such banks are in a position and desire to transact their banking business as usual, it is, therefore,

Ordered, That any and all banking institutions, as defined in the proclamation of the President of the United States, operating and carrying on business in the Virgin Islands, be, and the same hereby are, authorized and permitted to perform all usual banking functions during the period as ordered in the proclamation of the President of the United States and any and all extensions thereof, and/or until the further order of the undersigned in the premises, provided, however, that no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.

THE TERRITORY OF HAWAII (MARCH 9, 1933)

Under and by virtue of the authority conferred upon the Secretary of the Treasury, by the proclamation of the President of the United States of America issued March 6, 1933, declaring a bank holiday from Monday, March 6, to Thursday, March 9, 1933, inclusive, as extended by a proclamation of the President issued March 9, 1933, and wherein the Secretary of the Treasury was authorized and empowered with the approval of the President to permit, under proper regulations, certain banking institutions to perform any and all of the usual banking functions, and it appearing

That the Hon. Lawrence M. Judd, Governor of the Territory of Hawaii, advised that there is no necessity

for the application of the terms of the proclamation to the banks operating in the Territory of Hawaii after the close of business March 9, 1933, and that such banks are in a position and desire to transact their banking business as usual, it is, therefore,

Ordered, That any and all banking institutions, as defined in the proclamation of the President of the United States, operating and carrying on business in the Territory of Hawaii, be and the same hereby are, authorized and permitted to perform all usual banking functions during the period as ordered in the proclamation of the President of the United States and any and all extensions thereof, and/or until the further order of the undersigned in the premises, provided, however, that no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.

The following authorization, of March 7, 1933, was issued by the Secretary of the Treasury, with the approval of the President, permitting the Federal Reserve Bank of New York to ship gold earmarked for foreign governments and foreign banks prior to March 6, 1933:

"Under authority conferred upon me by the President's proclamation of March 6, 1933, declaring a bank holiday, the Federal Reserve Bank of New York is authorized, in the case of gold earmarked for foreign governments, foreign central banks, and the Bank of International Settlements prior to March 6, 1933, to permit the export of such gold to the government or foreign bank entitled thereto under a license by the Secretary of the Treasury specifically authorizing each shipment."



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Proof-of-Claim – C. 2 / 4

Article 100 – Cestui Que Vie Trust

Roman Canon Law 3.3

Canon 2036- 2057

Rights Suspension AND Corruption

Source:

http://one-heaven.org/canons/positive_law/article/100.html

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12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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ROMAN CANON LAW 3.3 Rights Suspension and Corruption
Article 100 - Cestui Que Vie Trust

January 6, 2015 at 9:59am

Canon 2036

A Cestui Que Vie Trust, also known by several other pseudonyms such as "Term of Life or Years" or "Pur Autre Vie" or "Fide Commissary Trust" or "Foreign Situs Trust" or "Secret Trust" is a pseudo form of trust first formed in the 16th Century under Henry VIII of England on one or more presumptions including (but not limited to) one or more Persons presumed wards, infants, idiots, lost or abandoned at "sea" and therefore assumed/presumed "dead" after seven (7) years. Additional presumptions by which such a Trust may be "legally" formed were added in later statutes to include bankruptcy, incapacity, mortgages and private companies.

Canon 2037

In terms of the evidential history of the formation of Cestui Que Vie Trusts:

(i) The first Cestui Que Vie Trusts formed were through an Act of Henry VIII of England in 1540 (**32Hen.8 c1**) and later wholly corrupted whereby the poor people of England, after having all their homes, goods and wealth seized in 1535 (**27Hen.8 c.28**) under the "guise" of small religious estates under £200, were granted the welfare or "commonwealth" benefit of an Cestui Que Use or simply an "estate" with which to live, to work and to bequeath via a written will; and

(ii) In 1666 Westminster and the ruling classes passed the infamous "Proof of Life Act" also called the Cestui Que Vie Act (**19Car.2 c.6**) whereby the poor and disenfranchised that had not "proven" to Westminster and the Courts they were alive, were henceforth to be declared "dead in law" and therefore lost, abandoned and their property to be managed in their absence. This supremely morally repugnant act, which remains in force today, is the birth of Mundi and the infamous occult rituals of the British Courts in the wearing of black robes and other paraphernalia in honoring the "dead", and

(iii) In 1707 Westminster under Queen Anne (**6Ann c.18**) extended the provisions of "Proof of Life" and Cestui Que Vie, extending the use of such structures ultimately for corporate and other franchise purposes. This wicked, profane and completely sacrilegious act in direct defiance to all forms of Christian morals and Rule of Law has remained a cornerstone of global banking and financial control to the 21st Century; and

(iv) In 1796, King George III (**36 Geo.3. c.52 §20**) duty was applied to Estates Pur Autre Vie for the first time; and

(v) In 1837 (**1 Vict. c.26**) and the amendments to the nature of Wills, that if a person under an Estate Pur Autre Vie (Cestui Que Vie) did not make a proper will, then such property would be granted to the executors and administrators.



ROMAN CANON LAW 3.3 Rights Suspension and Corruption
Article 100 - Cestui Que Vie Trust

Canon 2038

In terms of the evidential history of the operation and any form of relief or remedy associated with Cestui Que Vie Trusts, taking into account all Statutes referencing Cestui Que Vie prior to 1540 are a deliberate fraud and proof of the illegitimacy of Westminster Statutes:

(i) The "first" Act outlining Cestui Que (Vie) Trusts is deliberately hidden under the claimed statutes of the reign of King Richard III in 1483 (**1Rich.3 c.1**) whereby the act (still in force) states that all conveyances and transfers and use of property is good, even though a purchaser may be unaware it is effectively under "cestui que use" (subject to a Cestui Que Vie Trust). The act also gives a vague and challenge path of relief that if one is of complete mind, not an infant and not under financial duress then any property under Cestui Que Vie Trusts is rightfully theirs for use; and

(ii) The "second" Act outlining Cestui Que (Vie) Trusts is deliberately hidden under the reign of Henry 7th in 1488 (**4Hen.7 c.17**) permitted lords to render any attempt by people classed as "wards" to demonstrate their freedom useless and that such lords may use writs and other devices to "force" such people back to being compliant "wards" (poor slaves). The only remedy under this act was if a ward demonstrated the waste of the lord as to the property (and energy) seized from the poor (ignorant white slaves); and

(iii) The "third" Act outlining the operation of Cestui Que Vie only hidden this time as Estate Pur Autre Vie was in 1741 under **14Geo.2 c.20**) whereby one who was knowledgeable of the Cestui Que Vie slavery system could between the ages of 18 to 20, seek to recover such property under Cestui Que Vie and cease to be a slave. However, the same act made law that after 20 years, the remedy for such recovery was no longer available, despite the fact that the existence of Cestui Que Vie Trusts is denied and Westminster and Banks are sworn to lie, obstruct, hide at all cost the existence of the foundations of global banking slavery.

Canon 2039

In terms of essential elements concerning Cestui Que Vie Trusts:

(i) A Cestui Que (Vie) Trust may only exist for seventy (70) years being the traditional accepted "life" expectancy of the estate; and

(ii) A Beneficiary under Estate may be either a Beneficiary or a Cestui Que (Vie) Trust. When a Beneficiary loses direct benefit of any Property of the higher Estate placed in Cestui Que (Vie)



ROMAN CANON LAW 3.3 Rights Suspension and Corruption

Article 100 - Cestui Que Vie Trust

Trust on their behalf, they do not "own" the Cestui Que (Vie) Trust and are only the beneficiary of what the Trustees of the Cestui Que (Vie) Trust choose to provide them; and (iii) The original purpose and function of a Cestui Que (Vie) Trust was to form a temporary Estate for the benefit of another because some event, state of affairs or condition prevented them from claiming their status as living, competent and present before a competent authority. Therefore, any claims, history, statutes or arguments that deviate in terms of the origin and function of a Cestui Que (Vie) Trust as pronounced by these canons is false and automatically null and void.

Canon 2040

The Trust Corpus created by a Cestui Que (Vie) is also known as the Estate from two Latin words e+statuo literally meaning "by virtue of decree, statute or judgment". However, as the Estate is held in a Temporary not permanent Trust, the (Corporate) Person as Beneficiary is entitled only to equitable title and the use of the Property, rather than legal title and therefore ownership of the Property. Only the Corporation, also known as Body Corporate, Estate and Trust Corpus of a Cestui Que (Vie) Trust possesses valid legal personality.

Canon 2041

The Property of any Estate created through a Temporary (Testamentary) Trust may be regarded as under "Cestui Que Use" by the Corporate Person, even if another name or description is used to define the type of trust or use. Therefore "Cestui Que Use is not a Person but a Right and therefore a form of "property".

Canon 2042

In 1534, prior to the 1st Cestui Que Vie Act (1540), Henry VIII declared the first Cestui Que Vie type estate with the Act of Supremacy which created the Crown Estate. In 1604, seventy (70) years later, James I of England modified the estate as the Crown Union (Union of Crowns). By the 18th Century, the Crown was viewed as a company. However by the start of the 19th Century around 1814 onwards upon the bankruptcy of the company (1814/15), it became the fully private Crown Corporation controlled by European private banker families.

Canon 2043

Since 1581, there has been a second series of Cestui Que Vie Estates concerning the property of "persons" and rights which migrated to the United States for administration including:

- (i) In 1651 the Act for the Settlement of Ireland 1651-52 which introduced the concept of "settlements", enemies of the state and restrictions of movement in states of "emergency"; and
- (ii) In 1861 the Emergency Powers Act 1861; and
- (iii) In 1931 the Emergency Relief and Construction Act 1931-32; and
- (iv) in 2001 the Patriot Act 2001.



ROMAN CANON LAW 3.3 Rights Suspension and Corruption

Article 100 - Cestui Que Vie Trust

Canon 2044

Since 1591, there has been a third series of Cestui Que Vie Estates concerning the property of "soul" and ecclesiastical rights which migrated to the United States for administration including:

- (i) In 1661 the Act of Settlement 1661-62; and
- (ii) In 1871 the District of Columbia Act 1871; and
- (iii) In 1941 the Lend Lease Act 1941.

Canon 2045

By 1815 and the bankruptcy of the Crown and Bank of England by the Rothschilds, for the 1st time, the Cestui Que Vie Trusts of the United Kingdom became assets placed in private banks effectively becoming "private trusts" or "Fide Commissary Trusts" administered by commissioners (guardians). From 1835 and the Wills Act, these private trusts have been also considered "Secret Trusts" whose existence does not need to be divulged.

Canon 2046

From 1917/18 with the enactment of the Sedition Act and the Trading with the Enemy Act in the United States and through the United Kingdom, the citizens of the Commonwealth and the United States became effectively "enemies of the state" and "aliens" which in turn converted the "Fide Commissary" private secret trusts to "Foreign Situs" (Private International) Trusts.

Canon 2047

In 1931, the Roman Cult, also known as the Vatican created the Bank for International Settlements for the control of claimed property of associated private central banks around the world. Upon the deliberate bankruptcy of most countries, private central banks were installed as administrators and the global Cestui Que Vie/Foreign Situs Trust system was implemented from 1933 onwards.

Canon 2048

Since 1933, when a child is borne in a State(Estate) under inferior Roman law, three (3) Cestui Que (Vie) Trusts are created upon certain presumptions, specifically designed to deny the child forever any rights of Real Property, any Rights as a Free Person and any Rights to be known as man and woman rather than a creature or animal, by claiming and possessing their Soul or Spirit.

Canon 2049

Since 1933, upon a new child being borne, the Executors or Administrators of the higher Estate willingly and knowingly convey the beneficial entitlements of the child as Beneficiary into the 1st



ROMAN CANON LAW 3.3 Rights Suspension and Corruption

Article 100 - Cestui Que Vie Trust

Cestui Que(Vie) Trust in the form of a Registry Number by registering the Name, thereby also creating the Corporate Person and denying the child any rights as an owner of Real Property.

Canon 2050

Since 1933, when a child is borne, the Executors or Administrators of the higher Estate knowingly and willingly claim the baby as chattel to the Estate. The slave baby contract is then created by honoring the ancient tradition of either having the ink impression of the feet of the baby onto the live birth record, or a drop of its blood as well as tricking the parents to signing the baby away through the deceitful legal meanings on the live birth record. This live birth record as a promissory note is converted into a slave bond sold to the private reserve bank of the estate and then conveyed into a 2nd and separate Cestui Que (Vie) Trust per child owned by the bank. Upon the promissory note reaching maturity and the bank being unable to "seize" the slave child, a maritime lien is lawfully issued to "salvage" the lost property and itself monetized as currency issued in series against the Cestui Que (Vie) Trust.

Canon 2051

Each Cestui Que Vie Trust created since 1933 represents one of the 3 Crowns representing the 3 claims of property of the Roman Cult, being Real Property, Personal Property and Ecclesiastical Property and the denial of any rights to men and women, other than those chosen as loyal members of the society and as Executors and Administrators.

Canon 2052

The Three (3) Cestui Que Vie Trusts are the specific denial of rights of Real Property, Personal Property and Ecclesiastical Property for most men and women, corresponds exactly to the three forms of law available to the Galla of the Bar Association Courts. The first form of law is corporate commercial law is effective because of the 1st Cestui Que Vie Trust. The second form of law is maritime and trust law is effective because of the 2nd Cestui Que Vie Trust. The 3rd form of law is Talmudic and Roman Cult law is effective because of the 3rd Cestui Que Vie Trust of Baptism.

Canon 2053

The Birth Certificate issued under Roman Law represents the modern equivalent to the Settlement Certificates of the 17th century and signifies the holder as a pauper and effectively a Roman Slave. The Birth Certificate has no direct relationship to the private secret trusts controlled by the private banking network, nor can it be used to force the administration of a state or nation to divulge the existence of these secret trusts.

Canon 2054



ROMAN CANON LAW 3.3 Rights Suspension and Corruption
Article 100 - Cestui Que Vie Trust

As the Cestui Que Vie Trusts are created as private secret trusts on multiple presumptions including the ongoing bankruptcy of certain national estates, they remain the claimed private property of the Roman Cult banks and therefore cannot be directly claimed or used.

Canon 2055

While the private secret trusts of the private central banks cannot be directly addressed, they are still formed on certain presumptions of law including claimed ownership of the name, the body, the mind and soul of infants, men and women. Each and every man and woman has the absolute right to rebuke and reject such false presumptions as a member of One Heaven and holder of their own title.

Canon 2056

Given the private secret trusts of the private central banks are created on false presumptions, when a man or woman makes clear their Live Borne Record and claim over their own name, body, mind and soul, any such trust based on such false presumptions ceases to have any property.

Canon 2057

Any Administrator or Executor that refuses to immediately dissolve a Cestui Que (Vie) Trust, upon a Person establishing their status and competency, is guilty of fraud and fundamental breach of their fiduciary duties requiring their immediate removal and punishment.

The Slavery System

Whether we realized it or not, until recently, we were all 'legally' debt or 'labor' slaves, as were our parents, our grandparents and great grandparents before us.

Since 1933 every new child born was required to be 'registered', thereby creating a Corporate Person, effectively denying that child any rights as an owner of Real Property.

The act of registering a child contracted them as chattel, and the birth record was a deceptive legal way of getting the parents to sign the baby away. The birth record was in fact a promissory note that was converted into a slave bond, which was then sold to a private reserve bank effectively giving ownership of the child to the bank.

Each new baby's contract was sealed by either a drop of their blood or by an ink impression of their foot onto the birth record. This 'signature' was used to create their lifetime value, evidenced by their labor and the taxes and costs of that labor as monetized currency – all designed to keep people in servitude for their entire lifetime.



ROMAN CANON LAW 3.3 Rights Suspension and Corruption Article 100 - Cestui Que Vie Trust

The banks have been the modern slave owners and as the saying goes, "He who owns the debt owns the people." The way the Slavery System was imposed on us meant that even if we did end up paying off our house or our car, we never actually owned it, because our right to any Real Property ownership was given away at the registration of our birth.

This has been legal process since 1540 via something called a Cestui Que (Vie) Trust, and this was still in effect until the recent UCC Rulings changed the legal landscape and reinstated the un-rebuttable fact that no-one can own our 'selves or own our bodies.

The slavery system remained intact for so long because of educational doctrines, the influence of our community at large and because so many people accepted and embraced their slavery by waiting for others to help them or to tell them what they should/could or should/could not do. Enforcers like the police and courts made sure we stayed within the slavery system and incarcerated us if we chose to live as FREE individuals.

In fact, the slavery system was imposed on us all (and maintained for centuries) by building walls in our minds through propaganda and conditioning, creating the false belief that we did not deserve better, that we were not part of a greater plan and that we should instead be happy with the handouts, crumbs and 'indulgences' given to us by the Powers That Were (PTW), while the system itself reaped in millions of dollars every year, directly from the sweat and blood of our labor....But no more.

SOURCE; http://one-heaven.org/canons/positive_law/article/100.html



Proof-of-Claim – C. 3 / 4

**An Act To enact the Uniform commercial Code for the
District of Columbia, and for other purposes.**

77 Stat. 630

Public Law 88-243

December 30, 1963.

2021-016195 MISC Page: 378 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

Public Law 88-243

December 30, 1963
[H. R. 5338]

AN ACT

To enact the Uniform Commercial Code for the District of Columbia, and for other purposes.

District of
Columbia.
Uniform Com-
mercial Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Uniform Commercial Code is enacted as Subtitle I of Title 28 of the District of Columbia Code, in which it shall be designated "Subtitle I—Uniform Commercial Code", and may be cited as "D.C. Code, § —", as follows:

SUBTITLE I—UNIFORM COMMERCIAL CODE

ARTICLE	SECTION
1. GENERAL PROVISIONS.....	28: 1—101
2. SALES.....	28: 2—101
3. COMMERCIAL PAPER.....	28: 3—101
4. BANK DEPOSITS AND COLLECTIONS.....	28: 4—101
5. LETTERS OF CREDIT.....	28: 5—101
6. BULK TRANSFERS.....	28: 6—101
7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE.....	28: 7—101
8. INVESTMENT SECURITIES.....	28: 8—101
9. SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER.....	28: 9—101
10. CONSTRUCTION WITH OTHER LAWS.....	28:10—101

ARTICLE I—GENERAL PROVISIONS

PART 1—SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER

Sec.

- 28:1—101. Short title.
28:1—102. Purposes; rules of construction; variation by agreement.
28:1—103. Supplementary general principles of law applicable.
28:1—104. Construction against implicit repeal.
28:1—105. Territorial application of this subtitle; parties' power to choose applicable law.
28:1—106. Remedies to be liberally administered.
28:1—107. Waiver or renunciation of claim or right after breach.
28:1—108. Severability.
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PART 2—GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

- 28:1—201. General definitions.
28:1—202. Prima facie evidence by third party documents.
28:1—203. Obligation of good faith.
28:1—204. Time; reasonable time; "seasonably".
28:1—205. Course of dealing and usage of trade.
28:1—206. Statute of frauds for kinds of personal property not otherwise covered.
28:1—207. Performance or acceptance under reservation of rights.
28:1—208. Option to accelerate at will.



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¹ This section was not actually set out as text in D. C. Code, 1961 ed., § 501, cited above, but was cited, thereto, perhaps as one of the historical sources thereof.

² The text of this act was not actually set out in any of the sections of D. C. Code, 1961 ed., cited above, but such act was set out in notes under, or cited in the credits to, each such section.

³ This section was not actually set out as text in D. C. Code, 1961 ed., § 11-501, cited above, but was cited thereto, perhaps as one of the historical sources thereof.

⁴ Only the proviso in the first paragraph on this page.

⁵ Only the provisions commencing on this page and ending on page 254 which strike out section 763 of the Revised Statutes of the District of Columbia and substitute a new section so numbered.

⁶ As added by act Feb. 18, 1899, ch. 146, 35 Stat. 629 (635).

⁷ The text of this act was not actually set out in any of the sections of D. C. Code, 1961 ed., cited above, but such act was set out in notes under, or cited in the credits to, each such section.

⁸ This section was not actually set out as text in D. C. Code, 1961 ed., § 11-204, cited above, but was cited thereto, perhaps as one of the historical sources thereof.

⁹ This section was not actually set out as text in D. C. Code, 1961 ed., § 11-206, cited above, but was cited thereto, perhaps as one of the historical sources thereof.

¹⁰ This section was not actually set out as text in D. C. Code, 1961 ed., § 11-204, cited above, but was cited thereto, perhaps as one of the historical sources thereof.

¹¹ This section was not actually set out as text in D. C. Code, 1961 ed., § 11-206, cited above, but was cited thereto, perhaps as one of the historical sources thereof.

¹² No part of this act was actually set out as text in any section of D. C. Code, 1961 ed., but the act was cited in its entirety to the credits of section 11-501 thereof, cited above, and section 10 of the act was cited to section 14-404 thereof, cited above, perhaps as historical sources of those sections.



PART 1—SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER

§ 28:1—101. Short title

This subtitle shall be known and may be cited as Uniform Commercial Code.

Citation of title.

§ 28:1—102. Purposes; rules of construction; variation by agreement

(1) This subtitle shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this subtitle are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this subtitle may be varied by agreement, except as otherwise provided in this subtitle and except that the obligations of good faith, diligence, reasonableness and care prescribed by this subtitle may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this subtitle of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this subtitle unless the context otherwise requires

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

§ 28:1—103. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this subtitle, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

§ 28:1—104. Construction against implicit repeal

This subtitle being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§ 28:1—105. Territorial application of this subtitle; parties' power to choose applicable law

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to the District and also to a state or nation the parties may agree that the law either of the District or of such state or nation shall govern their rights and duties. Failing such agreement this subtitle applies to transactions bearing an appropriate relation to the District.

(2) Where one of the following provisions of this subtitle specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 28:2—402.

Applicability of the article on bank deposits and collections.

Section 28:4—102.



Bulk transfers subject to the article on bulk transfers. Section 28:6—102.

Applicability of the article on investment securities. Section 28:8—106.

Policy and scope of the article on secured transactions. Sections 28:9—102 and 28:9—103.

§ 28:1—106. Remedies to be liberally administered

(1) The remedies provided by this subtitle shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this subtitle or by other rule of law.

(2) Any right or obligation declared by this subtitle is enforceable by action unless the provision declaring it specifies a different and limited effect.

§ 28:1—107. Waiver or renunciation of claim or right after breach

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

§ 28:1—108. Severability

If any provision or clause of this subtitle or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle are declared to be severable.

§ 28:1—109. Section captions

Section captions are parts of this subtitle.

PART 2—GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§ 28:1—201. General definitions

Subject to additional definitions contained in the subsequent articles of this subtitle which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this subtitle:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this subtitle (sections 28:1—205 and 2—208). Whether an agreement has legal consequences is determined by the provisions of this subtitle, if applicable; otherwise by the law of contracts (section 28:1—103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.



(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this subtitle and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(14a) "District" means the District of Columbia; and "state" includes the District.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this subtitle to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.



(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this subtitle.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such information is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this subtitle.

(30) "Person" includes an individual or an organization (see section 28:1—102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to tribunal.



(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 28:2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 28:2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 28:2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28:3-303, 28:4-208 and 28:4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

§ 28:1—202. Prima facie evidence by third party documents

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

§ 28:1—203. Obligation of good faith

Every contract or duty within this subtitle imposes an obligation of good faith in its performance or enforcement.

§ 28:1—204. Time; reasonable time; "seasonably"

(1) Whenever this subtitle requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

§ 28:1—205. Course of dealing and usage of trade

(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

§ 28:1—206. Statute of frauds for kinds of personal property not otherwise covered

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 28:2—201) nor of securities (section 28:8—319) nor to security agreements (section 28:9—203).



§ 28:1—207. Performance or acceptance under reservation of rights

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

§ 28:1—208. Option to accelerate at will

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

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PART 1—SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER**§ 28:2—101. Short title**

This article shall be known and may be cited as Uniform Commercial Code—Sales.

Citation of article.

§ 28:2—102. Scope; certain security and other transactions excluded from this article

Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

§ 28:2—103. Definitions and index of definitions

(1) In this article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Acceptance". Section 28:2—606.

"Banker's credit". Section 28:2—325.

"Between merchants". Section 28:2—104.

"Cancellation". Section 28:2—106(4).

"Commercial unit". Section 28:2—105.

"Confirmed credit". Section 28:2—325.

"Conforming to contract". Section 28:2—106.



- (2) Other definitions applying to this article, etc.—Continued
- "Contract for sale". Section 28:2—106.
 - "Cover". Section 28:2—712.
 - "Entrusting". Section 28:2—403.
 - "Financing agency". Section 28:2—104.
 - "Future goods". Section 28:2—105.
 - "Goods". Section 28:2—105.
 - "Identification". Section 28:2—501.
 - "Installment contract". Section 28:2—612.
 - "Letter of Credit". Section 28:2—325.
 - "Lot". Section 28:2—105.
 - "Merchant". Section 28:2—104.
 - "Overseas". Section 28:2—323.
 - "Person in position of seller". Section 28:2—707.
 - "Present sale". Section 28:2—106.
 - "Sale". Section 28:2—106.
 - "Sale on approval". Section 28:2—326.
 - "Sale or return". Section 28:2—326.
 - "Termination". Section 28:2—106.
- (3) The following definitions in other articles apply to this article:
- "Check". Section 28:3—104.
 - "Consignee". Section 28:7—102.
 - "Consignor". Section 28:7—102.
 - "Consumer goods". Section 28:9—109.
 - "Dishonor". Section 28:3—507.
 - "Draft". Section 28:3—104.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§ 28:2—104. Definitions: "merchant"; "between merchants"; "financing agency"

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 28:2—707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

§ 28:2—105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit"

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 28:2—107).



(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

§ 28:2—106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation"

(1) In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (section 28:2—401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

§ 28:2—107. Goods to be severed from realty: recording

(1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.



(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

PART 2—FORM, FORMATION AND READJUSTMENT OF CONTRACT

§ 28:2—201. Formal requirements; statute of frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable.

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (section 28:2—606).

§ 28:2—202. Final written expression: parol or extrinsic evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (section 28:1—205) or by course of performance (section 28:2—208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

§ 28:2—203. Seals inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.



§ 28:2—204. Formation in general

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

§ 28:2—205. Firm offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

§ 28:2—206. Offer and acceptance in formation of contract

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

§ 28:2—207. Additional terms in acceptance or confirmation

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this subtitle.



§ 28:2—208. Course of performance or practical construction

(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (section 28:1—205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

§ 28:2—209. Modification, rescission and waiver

(1) An agreement modifying a contract within this article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this article (section 28:2—201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3), it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required by any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

§ 28:2—210. Delegation of performance; assignment of rights

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This



promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 28:2—609).

PART 3—GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 28:2—301. General obligations of parties

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

§ 28:2—302. Unconscionable contract or clause

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

§ 28:2—303. Allocation or division of risks

Where this article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

§ 28:2—304. Price payable in money, goods, realty, or otherwise

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

§ 28:2—305. Open price term

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of



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delivery and the seller must return any portion of the price paid on account.

§ 28:2—306. Output, requirements and exclusive dealings

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

§ 28:2—307. Delivery in single lot or several lots

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

§ 28:2—308. Absence of specified place for delivery

Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

§ 28:2—309. Absence of specific time provisions; notice of termination

(1) The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

§ 28:2—310. Open time for payment or running of credit; authority to ship under reservation

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 28:2—513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and



(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

§ 28:2—311. Options and cooperation respecting performance

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of section 28:2—204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1) (c) and (3) of section 28:2—319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

§ 28:2—312. Warranty of title and against infringement; buyer's obligation against infringement

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

§ 28:2—313. Express warranties by affirmation, promise, description, sample

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.



(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

§ 28:2—314. Implied warranty: merchantability; usage of trade

(1) Unless excluded or modified (section 28:2—316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (section 28:2—316), other implied warranties may arise from course of dealing or usage of trade.

§ 28:2—315. Implied warranty: fitness for particular purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

§ 28:2—316. Exclusion or modification of warranties

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this article on parol or extrinsic evidence (section 28:2—202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and



(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (sections 28:2—718 and 28:2—719).

§ 28:2—317. Cumulation and conflict of warranties express or implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

§ 28:2—318. Third party beneficiaries of warranties express or implied

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

§ 28:2—319. F.O.B. and F.A.S. terms

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (section 28:2—504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this article (section 28:2—503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this article on the form of bill of lading (section 28:8—323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this article (section 28:2—311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

§ 28:2—320. C.I.F. and C. & F. terms

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

§ 28:2—321. C.I.F. or C. & F.: "net landed weights"; "payment on arrival"; warranty of condition on arrival

Under a contract containing a term C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.



(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

§ 28:2—322. Delivery “ex-ship”

(1) Unless otherwise agreed a term for delivery of goods “ex-ship” (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

§ 28:2—323. Form of bill of lading required in overseas shipment; “overseas”

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 28:2—608); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is “overseas” insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

§ 28:2—324. “No arrival, no sale” term

Under a term “no arrival, no sale” or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 28:2—613).

§ 28:2—325. "Letter of credit" term; "confirmed credit"

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

§ 28:2—326. Sale on approval and sale or return; consignment sales and rights of creditors

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the article on secured transactions (article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (section 28:2—201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (section 28:2—202).

§ 28:2—327. Special incidents of sale on approval and sale or return

(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and



(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

§ 28:2-328. Sale by auction

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

PART 4—TITLE, CREDITORS AND GOOD FAITH PURCHASERS

§ 28:2-401. Passing of title; reservation for security; limited application of this section

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 28:2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this subtitle. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be



delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

§ 28:2—402. Rights of seller's creditors against sold goods

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this article (sections 28:2—502 and 28:2—716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the article on secured transactions (article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this article constitute the transaction a fraudulent transfer or voidable preference.

§ 28:2—403. Power to transfer; good faith purchase of goods; "entrusting"

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.



(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (article 9), bulk transfers (article 6) and documents of title (article 7).

PART 5—PERFORMANCE

§ 28:2—501. Insurable interest in goods; manner of identification of goods

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

§ 28:2—502. Buyer's right to goods on seller's insolvency

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

§ 28:2—503. Manner of seller's tender of delivery

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession: but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form except as provided in this article with respect to bills of lading in a set (subsection (2) of section 28:2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

§ 28:2-504. Shipment by seller

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

§ 28:2-505. Seller's shipment under reservation

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.



(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 28:2—507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

§ 28:2—506. Rights of financing agency

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

§ 28:2—507. Effect of seller's tender; delivery on condition

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

§ 28:2—508. Cure by seller of improper tender or delivery; replacement

(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

§ 28:2—509. Risk of loss in the absence of breach

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 28:2—505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

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(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection

(4) (b) of section 28:2—503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 28:2—327) and on effect of breach on risk of loss (section 28:2—510).

§ 28:2—510. Effect of breach on risk of loss

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

§ 28:2—511. Tender of payment by buyer; payment by check

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this subtitle on the effect of an instrument on an obligation (section 28:3—802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

§ 28:2—512. Payment by buyer before inspection

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this subtitle (section 28:5—114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

§ 28:2—513. Buyer's right to inspection of goods

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.



(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (3) of section 28:2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

§ 28:2-514. When documents deliverable on acceptance; when on payment

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

§ 28:2-515. Preserving evidence of goods in dispute

In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

PART 6—BREACH, REPUDIATION AND EXCUSE

§ 28:2-601. Buyer's rights on improper delivery

Subject to the provisions of this article on breach in installment contracts (section 28:2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 28:2-718 and 28:2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

§ 28:2-602. Manner and effect of rightful rejection

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (sections 28:2-603 and 28:2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (3) of section 28:2-711), he



is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on Seller's remedies in general (section 28:2—703).

§ 28:2—603. Merchant buyer's duties as to rightfully rejected goods

(1) Subject to any security interest in the buyer (subsection (3) of section 28:2—711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

§ 28:2—604. Buyer's options as to salvage of rightfully rejected goods

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

§ 28:2—605. Waiver of buyer's objections by failure to particularize

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

§ 28:2—606. What constitutes acceptance of goods

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of section 28:2—602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or



(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§ 28:2—607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection

(3) of section 28:2—312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of section 28:2—312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of section 28:2—312).

§ 28:2—608. Revocation of acceptance in whole or in part

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.



§ 28:2—609. Right to adequate assurance of performance

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

§ 28:2—610. Anticipatory repudiation

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (section 28:2—703 or section 28:2—711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 28:2—704).

§ 28:2—611. Retraction of anticipatory repudiation

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this article (section 28:2—609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

§ 28:2—612. "Installment contract"; breach

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole con-



tract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

§ 28:2—613. Casualty to identified goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (section 28:2—324) then

- (a) if the loss is total the contract is avoided; and
- (b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

§ 28:2—614. Substituted performance

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

§ 28:2—615. Excuse by failure of presupposed conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

§ 28:2—616. Procedure on notice claiming excuse

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this article relating to



breach of installment contracts (section 28:2—612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

PART 7—REMEDIES

§ 28:2—701. Remedies for breach of collateral contracts not impaired

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this article.

§ 28:2—702. Seller's remedies on discovery of buyer's insolvency

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this article (section 28:2—705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this article (section 28:2—403). Successful reclamation of goods excludes all other remedies with respect to them.

§ 28:2—703. Seller's remedies in general

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 28:2—612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (section 28:2—705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (section 28:2—706);

(e) recover damages for non-acceptance (section 28:2—708) or in a proper case the price (section 28:2—709);

(f) cancel.



§ 28:2—704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods

- (1) An aggrieved seller under the preceding section may
 - (a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
 - (b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.
- (2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

§ 28:2—705. Seller's stoppage of delivery in transit or otherwise

- (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 28:2—702) and may stop delivery of carload, truckload, flatload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.
- (2) As against such buyer the seller may stop delivery until
 - (a) receipt of the goods by the buyer; or
 - (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
 - (c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or
 - (d) negotiation to the buyer of any negotiable document of title covering the goods.
- (3)
 - (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
 - (b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
 - (c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.
 - (d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§ 28:2—706. Seller's resale including contract for resale

- (1) Under the conditions stated in section 28:2—703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this article (section 28:2—710), but less expenses saved in consequence of the buyer's breach.
- (2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the



goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 28:2—707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of section 28:2—711).

§ 28:2—707. "Person in the position of a seller"

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this article withhold or stop delivery (section 28:2—705) and resell (section 28:2—706) and recover incidental damages (section 28:2—710).

§ 28:2—708. Seller's damages for non-acceptance or repudiation

(1) Subject to subsection (2) and to the provisions of this article with respect to proof of market price (section 28:2—723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (section 28:2—710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this article (section 28:2—710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

§ 28:2—709. Action for the price

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and



(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 28:2—610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

§ 28:2—710. Seller's incidental damages

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

§ 28:2—711. Buyer's remedies in general; buyer's security interest in rejected goods

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole of the breach goes to the whole contract (section 28:2—612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this article (section 28:2—713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this article (section 28:2—502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this article (section 28:2—716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (section 28:2—706).

§ 28:2—712. "Cover"; buyer's procurement of substitute goods

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (section 28:2—715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

§ 28:2—713. Buyer's damages for non-delivery or repudiation

(1) Subject to the provisions of this article with respect to proof of market price (section 28:2—723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this article (section 28:2—715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

§ 28:2—714. Buyer's damages for breach in regard to accepted goods

(1) Where the buyer has accepted goods and given notification (subsection (3) of section 28:2—607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

§ 28:2—715. Buyer's incidental and consequential damages

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

§ 28:2—716. Buyer's right to specific performance or replevin

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

§ 28:2—717. Deduction of damages from the price

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.



§ 28:2—718. Liquidation or limitation of damages; deposits

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this article on resale by an aggrieved seller (section 28:2—706).

§ 28:2—719. Contractual modification or limitation of remedy

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this subtitle.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

§ 28:2—720. Effect of "cancellation" or "rescission" on claims for antecedent breach

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.



§ 28:2—721. Remedies for fraud

Remedies for material misrepresentation or fraud include all remedies available under this article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

§ 28:2—722. Who can sue third parties for injury to goods

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

§ 28:2—723. Proof of market price: time and place

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (section 28:2—708 or section 28:2—713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

§ 28:2—724. Admissibility of market quotations

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

§ 28:2—725. Statute of limitations in contracts for sale

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach



of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this subtitle becomes effective.

ARTICLE 3—COMMERCIAL PAPER

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Sec.

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PART 1—SHORT TITLE, FORM AND INTERPRETATION**§ 28:3—101. Short title**

This article shall be known and may be cited as Uniform Commercial Code—Commercial Paper.

§ 28:3—102. Definitions and index of definitions

- (1) In this article unless the context otherwise requires
 - (a) "Issue" means the first delivery of an instrument to a holder or a remitter.
 - (b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay

Citation of article.



with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this article and the sections in which they appear are:

"Acceptance". Section 28:3—410.

"Accommodation party". Section 28:3—415.

"Alteration". Section 28:3—407.

"Certificate of deposit". Section 28:3—104.

"Certification". Section 28:3—411.

"Check". Section 28:3—104.

"Definite time". Section 28:3—109.

"Dishonor". Section 28:3—507.

"Draft". Section 28:3—104.

"Holder in due course". Section 28:3—302.

"Negotiation". Section 28:3—202.

"Note". Section 28:3—104.

"Notice of dishonor". Section 28:3—508.

"On demand". Section 28:3—108.

"Presentment". Section 28:3—504.

"Protest". Section 28:3—509.

"Restrictive Indorsement". Section 28:3—205.

"Signature". Section 28:3—401.

(3) The following definitions in other articles apply to this article.

"Account". Section 28:4—104.

"Banking day". Section 28:4—104.

"Clearing house". Section 28:4—104.

"Collecting bank". Section 28:4—105.

"Customer". Section 28:4—104.

"Depository bank". Section 28:4—105.

"Documentary draft". Section 28:4—104.

"Intermediary bank". Section 28:4—105.

"Item". Section 28:4—104.

"Midnight deadline". Section 28:4—104.

"Payor bank". Section 28:4—105.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§ 28:3—103. Limitations on scope of article

(1) This article does not apply to money, documents of title or investment securities.

(2) The provisions of this article are subject to the provisions of the article on bank deposits and collections (article 4) and secured transactions (article 9).

§ 28:3—104. Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note"

(1) Any writing to be a negotiable instrument within this article must

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this article; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.



(2) A writing which complies with the requirements of this section is

- (a) a "draft" ("bill of exchange") if it is an order;
 - (b) a "check" if it is a draft drawn on a bank and payable on demand;
 - (c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;
 - (d) a "note" if it is a promise other than a certificate of deposit.
- (3) As used in other articles of this subtitle, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this article as well as to instruments which are so negotiable.

§ 28:3—105. When promise or order unconditional

(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

- (a) is subject to implied or constructive conditions; or
- (b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or
- (c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or
- (d) states that it is drawn under a letter of credit; or
- (e) states that it is secured, whether by mortgage, reservation of title or otherwise; or
- (f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or
- (g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or
- (h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument

- (a) states that it is subject to or governed by any other agreement; or
- (b) states that it is to be paid only out of a particular fund or source except as provided in this section.

§ 28:3—106. Sum certain

(1) The sum payable is a sum certain even though it is to be paid

- (a) with stated interest or by stated installments; or
- (b) with stated different rates of interest before and after default or a specified date; or
- (c) with a stated discount or addition if paid before or after the date fixed for payment; or
- (d) with exchange or less exchange, whether at a fixed rate or at the current rate; or
- (e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal.

§ 28:3—107. Money

(1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.



(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

§ 28:3—108. Payable on demand

Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

§ 28:3—109. Definite time

(1) An instrument is payable at a definite time if by its terms it is payable—

- (a) on or before a stated date or at a fixed period after a stated date; or
- (b) at a fixed period after sight; or
- (c) at a definite time subject to any acceleration; or
- (d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

§ 28:3—110. Payable to order

(1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

- (a) the maker or drawer; or
- (b) the drawee; or
- (c) a payee who is not maker, drawer or drawee; or
- (d) two or more payees together or in the alternative; or
- (e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or
- (f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or
- (g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed".

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

§ 28:3—111. Payable to bearer

An instrument is payable to bearer when by its terms it is payable to—

- (a) bearer or the order of bearer; or
- (b) a specified person or bearer; or
- (c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

§ 28:3—112. Terms and omissions not affecting negotiability

(1) The negotiability of an instrument is not affected by—

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in the case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (section 28:3—801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal.

§ 28:3—113. Seal

An instrument otherwise negotiable is within this article even though it is under a seal.

§ 28:3—114. Date, antedating, postdating

(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated, or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

§ 28:3—115. Incomplete instruments

(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (section 28:3—407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

§ 28:3—116. Instruments payable to two or more persons

An instrument payable to the order of two or more persons

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

§ 28:3—117. Instruments payable with words of description

An instrument made payable to a named person with the addition of words describing him

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(b) as any other fiduciary for a specified person or purpose is



payable to the payee and may be negotiated, discharged or enforced by him;

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

§ 28:3—118. Ambiguous terms and rules of construction

The following rules apply to every instrument:

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay".

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with section 28:3—604 tenders full payment when the instrument is due.

§ 28:3—119. Other writings affecting instrument

(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument.

§ 28:3—120. Instruments "payable through" bank

An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

§ 28:3—121. Instruments payable at bank

A note or acceptance which states that it is payable at a bank is the equivalent of a draft drawn on the bank payable when it falls due out of any funds of the maker or acceptor in current account or otherwise available for such payment.

§ 28:3—122. Accrual of cause of action

(1) A cause of action against a maker or an acceptor accrues

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.



(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.

PART 2—TRANSFER AND NEGOTIATION

§ 28:3—201. Transfer: right to indorsement

(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

§ 28:3—202. Negotiation

(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.

§ 28:3—203. Wrong or misspelled name

Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

§ 28:3—204. Special indorsement; blank indorsement

(1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.



§ 28:3—205. Restrictive indorsements

An indorsement is restrictive which either

- (a) is conditional; or
- (b) purports to prohibit further transfer of the instrument; or
- (c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or
- (d) otherwise states that it is for the benefit or use of the indorser or of another person.

§ 28:3—206. Effect of restrictive indorsement

(1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of section 28:3—205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of section 28:3—302 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of section 28:3—205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of section 28:3—302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of section 28:3—304).

§ 28:3—207. Negotiation effective although it may be rescinded

(1) Negotiation is effective to transfer the instrument although the negotiation is

- (a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or
- (b) obtained by fraud, duress or mistake of any kind; or
- (c) part of an illegal transaction; or
- (d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

§ 28:3—208. Reacquisition

Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well.

PART 3—RIGHTS OF A HOLDER

§ 28:3—301. Rights of a holder

The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in section 28:3—603 on payment or satisfaction, discharge it or enforce payment in his own name.

§ 28:3—302. Holder in due course

- (1) A holder in due course is a holder who takes the instrument
 - (a) for value; and
 - (b) in good faith; and
 - (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.
- (2) A payee may be a holder in due course.
- (3) A holder does not become a holder in due course of an instrument:
 - (a) by purchase of it at judicial sale or by taking it under legal process; or
 - (b) by acquiring it in taking over an estate; or
 - (c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.
- (4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

§ 28:3—303. Taking for value

A holder takes the instrument for value

- (a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or
- (b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or
- (c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

§ 28:3—304. Notice to purchaser

- (1) The purchaser has notice of a claim or defense if
 - (a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or
 - (b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.
- (2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.
- (3) The purchaser has notice that an instrument is overdue if he has reason to know
 - (a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or
 - (b) that acceleration of the instrument has been made; or
 - (c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District is presumed to be thirty days.



(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

- (a) that the instrument is antedated or postdated;
- (b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;
- (c) that any party has signed for accommodation;
- (d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;
- (e) that any person negotiating the instrument is or was a fiduciary;
- (f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this article to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

§ 28:3—305. Rights of a holder in due course

To the extent that a holder is a holder in due course he takes the instrument free from

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except
 - (a) infancy, to the extent that it is a defense to a simple contract; and
 - (b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and
 - (c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and
 - (d) discharge in insolvency proceedings; and
 - (e) any other discharge of which the holder has notice when he takes the instrument.

§ 28:3—306. Rights of one not holder in due course

Unless he has the rights of a holder in due course any person takes the instrument subject to

- (a) all valid claims to it on the part of any person; and
- (b) all defenses of any party which would be available in an action on a simple contract; and
- (c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (section 28:3—408); and
- (d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

§ 28:3—307. Burden of establishing signatures, defenses and due course

- (1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

PART 4—LIABILITY OF PARTIES

§ 28:3—401. Signature

(1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

§ 28:3—402. Signature in ambiguous capacity

Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

§ 28:3—403. Signature by authorized representative

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

§ 28:3—404. Unauthorized signatures

(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.



§ 28:3—405. Impostors; signature in name of payee

(1) An indorsement by any person in the name of a named payee is effective if

(a) an imposter by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

§ 28:3—406. Negligence contributing to alteration or unauthorized signature

Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

§ 28:3—407. Alteration

(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

§ 28:3—408. Consideration

Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (section 28:3—305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this subtitle under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

§ 28:3—409. Draft not an assignment

(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.



§ 28:3—410. Definition and operation of acceptance

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

§ 28:3—411. Certification of a check

(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

§ 28:3—412. Acceptance varying draft

(1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.

§ 28:3—413. Contract of maker, drawer and acceptor

(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to section 28:3—115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

§ 28:3—414. Contract of indorser; order of liability

(1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

§ 28:3—415. Contract of accommodation party

(1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.



(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated; and if he pays the instrument has a right of recourse on the instrument against such party.

§ 28:3-416. Contract of guarantor

(1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

§ 28:3-417. Warranties on presentment and transfer

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

(i) to a maker with respect to the maker's own signature;

or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith



- (i) to the maker of a note; or
- (ii) to the drawer of a draft whether or not the drawer is also the drawee; or
- (iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or
- (iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

- (a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and
- (b) all signatures are genuine or authorized; and
- (c) the instrument has not been materially altered; and
- (d) no defense of any party is good against him; and
- (e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2) (d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

§28:3—418. Finality of payment or acceptance

Except for recovery of bank payments as provided in the article on bank deposits and collections (article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

§28:3—419. Conversion of instrument; innocent representative

(1) An instrument is converted when

- (a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or
- (b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or
- (c) it is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this subtitle concerning restrictive indorsements a representative, including a depository or collecting bank, who has a good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depository bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (sections 28:3—205 and 28:3—206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.



PART 5—PRESENTMENT, NOTICE OF DISHONOR AND PROTEST**§ 28:3—501. When presentment, notice of dishonor, and protest necessary or permissible**

(1) Unless excused (section 28:3—511) presentment is necessary to charge secondary parties as follows:

(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere that at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any indorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 28:3—502(1)(b).

(2) Unless excused (section 28:3—511)

(a) notice of any dishonor is necessary to charge any indorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 28:3—502(1)(b).

(3) Unless excused (section 28:3—511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

§ 28:3—502. Unexcused delay; discharge

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

§ 28:3—503. Time of presentment

(1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;



(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an indorser, seven days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

§ 28:3—504. How presentment made

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in section 28:4—210 Presentment may be made in the manner and with the result stated in that section.

§ 28:3—505. Rights of party to whom presentment is made

(1) The party to whom presentment is made may without dishonor require

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and



- (d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.
- (2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

§ 28:3—506. Time allowed for acceptance or payment

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

§ 28:3—507. Dishonor; holder's right of recourse; term allowing re-presentment

(1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (section 28:4—301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

§ 28:3—508. Notice of dishonor

(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

- (4) Written notice is given when sent although it is not received.
- (5) Notice to one partner is notice to each although the firm has been dissolved.
- (6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.
- (7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.
- (8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

§ 28:3—509. Protest; noting for protest

- (1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.
- (2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.
- (3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.
- (4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.
- (5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

§ 28:3—510. Evidence of dishonor and notice of dishonor

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

- (a) a document regular in form as provided in the preceding section which purports to be a protest;
- (b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;
- (c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

§ 28:3—511. Waived or excused presentment, protest or notice of dishonor or delay therein

- (1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.
- (2) Presentment or notice or protest as the case may be is entirely excused when
 - (a) the party to be charged has waived it expressly or by implication either before or after it is due; or
 - (b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or
 - (c) by reasonable diligence the presentment or protest cannot be made or the notice given.
- (3) Presentment is also entirely excused when
 - (a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or



(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

PART 6-DISCHARGE

§ 28:3-601. Discharge of parties

(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

- (a) payment or satisfaction (section 28:3-603); or
- (b) tender of payment (section 28:3-604); or
- (c) cancellation or renunciation (section 28:3-605); or
- (d) impairment of right of recourse or of collateral (section 28:3-606); or
- (e) reacquisition of the instrument by a prior party (section 28:3-208); or
- (f) fraudulent and material alteration (section 28:3-407); or
- (g) certification of a check (section 28:3-411); or
- (h) acceptance varying a draft (section 28:3-412); or
- (i) unexcused delay in presentment or notice of dishonor or protest (section 28:3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

- (a) reacquires the instrument in his own right; or
- (b) is discharged under any provision of this article except as otherwise provided with respect to discharge for impairment of recourse or of collateral (section 28:3-606).

§ 28:3-602. Effect of discharge against holder in due course

No discharge of any party provided by this article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

§ 28:3-603. Payment or satisfaction

(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the



holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (section 28:3—201).

§ 28:3—604. Tender of payment

(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs, and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

§ 28:3—605. Cancellation and renunciation

(1) The holder of an instrument may even without consideration discharge any party

(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

§ 28:3—606. Impairment of recourse or of collateral

(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others.



PART 7—ADVICE OF INTERNATIONAL SIGHT DRAFT**§ 28:3—701. Letter of advice of international sight draft**

(1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account.

PART 8—MISCELLANEOUS**§ 28:3—801. Drafts in a set**

(1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (section 28:4—407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

§ 28:3—802. Effect of instrument on obligation for which it is given

(1) Unless otherwise agreed where an instrument is taken for an underlying obligation

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.



§ 28:3—803. Notice to third party

Where a defendant is sued for breach of an obligation for which a third person is answerable over under this article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the person notified does come in and defend he is so bound.

§ 28:3—804. Lost, destroyed or stolen instruments

The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

§ 28:3—805. Instruments not payable to order or to bearer

This article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

ARTICLE 4—BANK DEPOSITS AND COLLECTIONS

PART 1—GENERAL PROVISIONS AND DEFINITIONS

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- 28:4—209. When bank gives value for purposes of holder in due course.
- 28:4—210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.
- 28:4—211. Media of remittance; provisional and final settlement in remittance cases.
- 28:4—212. Right of charge-back or refund.
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- 28:4—214. Insolvency and preference.



ARTICLE 4—BANK DEPOSITS AND COLLECTIONS—Continued

PART 3—COLLECTION OF ITEMS: PAYOR BANKS

Sec.

- 28:4—301. Deferred posting; recovery of payment by return of items; time of dishonor.
 28:4—302. Payor bank's responsibility for late return of item.
 28:4—303. When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified.

PART 4—RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

- 28:4—401. When bank may charge customer's account.
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 28:4—403. Customer's right to stop payment; burden of proof of loss.
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 28:4—405. Death or incompetence of customer.
 28:4—406. Customer's duty to discover and report unauthorized signature or alteration.
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PART 5—COLLECTION OF DOCUMENTARY DRAFTS

- 28:4—501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.
 28:4—502. Presentment of "on arrival" drafts.
 28:4—503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.
 28:4—504. Privilege of presenting bank to deal with goods; security interest for expenses.

PART 1—GENERAL PROVISIONS AND DEFINITIONS

§ 28:4—101. Short title

This article shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections.

Citation of article.

§ 28:4—102. Applicability

(1) To the extent that items within this article are also within the scope of articles 3 and 8, they are subject to the provisions of those articles. In the event of conflict the provisions of this article govern those of article 3 but the provisions of article 8 govern those of this article.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

§ 28:4—103. Variation by agreement; measure of damages; certain action constituting ordinary care

(1) The effect of the provisions of this article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.



(3) Action or non-action approved by this article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence.

§ 28:4—104. Definitions and index of definitions

(1) In this article unless the context otherwise requires

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearing house" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this article and the sections in which they appear are:

"Collecting bank". Section 28:4—105.

"Depository bank". Section 28:4—105.

"Intermediary bank". Section 28:4—105.

"Payor bank". Section 28:4—105.

"Presenting bank". Section 28:4—105.

"Remitting bank". Section 28:4—105.



(3) The following definitions in other articles apply to this article:

- "Acceptance". Section 28:3—410.
- "Certificate of deposit". Section 28:3—104.
- "Certification". Section 28:3—411.
- "Check". Section 28:3—104.
- "Draft". Section 28:3—104.
- "Holder in due course". Section 28:3—302.
- "Notice of dishonor". Section 28:3—508.
- "Presentment". Section 28:3—504.
- "Protest". Section 28:3—509.
- "Secondary party". Section 28:3—102.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§ 28:4—105. "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank"

In this article unless the context otherwise requires:

- (a) "Depository bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;
- (b) "Payor bank" means a bank by which an item is payable as drawn or accepted;
- (c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depository or payor bank;
- (d) "Collecting bank" means any bank handling the item for collection except the payor bank;
- (e) "Presenting bank" means any bank presenting an item except a payor bank;
- (f) "Remitting bank" means any payor or intermediary bank remitting for an item.

§ 28:4—106. Separate office of a bank

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this article and under article 3. The receipt of any notice or order by or the knowledge of one branch or separate office of a bank is not actual or constructive notice to or knowledge of any other branch or office of the same bank and does not impair the right of another branch or office to be a holder in due course of an item.

§ 28:4—107. Time of receipt of items

(1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

§ 28:4—108. Delays

(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this subtitle for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this subtitle or by instructions is excused if



caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

§ 28:4—109. Process of posting

The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

- (a) verification of any signature;
- (b) ascertaining that sufficient funds are available;
- (c) affixing a "paid" or other stamp;
- (d) entering a charge or entry to a customer's account;
- (e) correcting or reversing an entry or erroneous action with respect to the item.

PART 2—COLLECTION OF ITEMS; DEPOSITARY AND COLLECTING BANKS

§ 28:4—201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of article; item indorsed "pay any bank"

(1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of section 28:4—211 and sections 28:4—212 and 28:4—213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

- (a) until the item has been returned to the customer initiating collection; or
- (b) until the item has been specially indorsed by a bank to a person who is not a bank.

§ 28:4—202. Responsibility for collection; when action seasonable

- (1) A collecting bank must use ordinary care in
 - (a) presenting an item or sending it for presentment; and
 - (b) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of section 28:4—212 after learning that the item has not been paid or accepted, as the case may be; and
 - (c) settling for an item when the bank receives final settlement; and
 - (d) making or providing for any necessary protest; and
 - (e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.
- (2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts season-



ably; taking proper action within a reasonably longer time may be reasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

§ 28:4—203. Effect of instructions

Subject to the provisions of article 3 concerning conversion of instruments (section 28:3—419) and the provisions of both article 3 and this article concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

§ 28:4—204. Methods of sending and presenting; sending direct to payor bank

(1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send

(a) any item direct to the payor bank;

(b) any item to any non-bank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

§ 28:4—205. Supplying missing indorsement; no notice from prior indorsement

(1) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.

§ 28:4—206. Transfer between banks

Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

§ 28:4—207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims

(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given



by any customer or collecting bank that is a holder in due course and acts in good faith

- (i) to a maker with respect to the maker's own signature; or
- (ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or
- (iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

- (i) to the maker of a note; or
- (ii) to the drawer of a draft whether or not the drawer is also the drawee; or
- (iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or
- (iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

- (a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and
- (b) all signatures are genuine or authorized; and
- (c) the item has not been materially altered; and
- (d) no defense of any party is good against him; and
- (e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement of words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

§ 28:4—208. Security interest of collecting bank in items, accompanying documents and proceeds

(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

- (a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;



(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of article 9 except that

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of section 28:9—203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

§ 28:4—209. When bank gives value for purposes of holder in due course

For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of section 28:3—302 on what constitutes a holder in due course.

§ 28:4—210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 28:3—505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under section 28:3—505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

§ 28:4—211. Media of remittance; provisional and final settlement in remittance cases

(1) A collecting bank may take in settlement of an item

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or



(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement.

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by sub-paragraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

§ 28:4—212. Right of charge-back or refund

(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of section 28:4—211 and subsections (2) and (3) of section 28:4—213).

(2) (Omitted.)

(3) A depository bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 28:4—301).

(4) The right to charge-back is not affected by

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-



back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

§ 28:4—213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal

(1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

- (a) paid the item in cash; or
- (b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or
- (c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or
- (d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of section 28:4—211, subsection (2) of section 28:4—213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

(a) in any case where the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depository bank and a payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

§ 28:4—214. Insolvency and preference

(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.



(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of section 28:4—211, subsections (1) (d), (2) and (3) of section 28:4—213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

PART 3—COLLECTION OF ITEMS: PAYOR BANKS

§ 28:4—301. Deferred posting; recovery of payment by return of items; time of dishonor

(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of section 28:4—213) and before its midnight deadline it

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

§ 28:4—302. Payor bank's responsibility for late return of item

In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of section 28:4—207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.



§ 28:4—303. When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified

(1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

- (a) accepted or certified the item;
 - (b) paid the item in cash;
 - (c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;
 - (d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged there-with or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or
 - (e) become accountable for the amount of the item under subsection (1)(d) of section 28:4—213 and section 28:4—302 dealing with the payor bank's responsibility for late return items.
- (2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

PART 4—RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

§ 28:4—401. When bank may charge customer's account

(1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

- (a) the original tenor of his altered item; or
- (b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

§ 28:4—402. Bank's liability to customer for wrongful dishonor

A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

§ 28:4—403. Customer's right to stop payment; burden of proof of loss

(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in section 28:4—303. No such order shall be valid, however, unless it shall be in writing specifically describing the item to which it relates by stating the amount, date and payee thereof.



(2) Anything in this section 28:4-403 to the contrary notwithstanding, any stop payment order transmitted by telephone by a customer to an officer of a bank, while such officer is on the premises thereof, shall be accepted by such bank, upon such identification that will insure the order has been transmitted by such customer, as an effective order for a period of twenty-four hours, after which time it shall no longer be valid unless followed by a written order as provided in this section 28:4-403. A written order is effective for only six months unless renewed in writing. The bank may, at its option and without liability, stop payment of an item after the expiration of a stop payment order or any renewal thereof relating to such item.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

§ 28:4-404. Bank not obligated to pay check more than six months old

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in the absence of an effective stop payment order in accordance with section 28:4-403.

§ 28:4-405. Death or incompetence of customer

(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

§ 28:4-406. Customer's duty to discover and report unauthorized signature or alteration

(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.



(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

§ 28:4—407. Payor bank's right to subrogation on improper payment

If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

PART 5—COLLECTION OF DOCUMENTARY DRAFTS

§ 28:4—501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor

A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

§ 28:4—502. Presentment of "on arrival" drafts

When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

§ 28:4—503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need

Unless otherwise instructed and except as provided in article 5 a bank presenting a documentary draft



(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

§ 28:4—504. Privilege of presenting bank to deal with goods; security interest for expenses

(1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

ARTICLE 5—LETTERS OF CREDIT

Sec.

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§ 28:5—101. Short title

Citation of article.

The article shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

§ 28:5—102. Scope

(1) This article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.



(2) Unless the engagement meets the requirements of subsection (1), this article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this subtitle or may hereafter develop. The fact that this article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this article.

§ 28:5—103. Definitions

(1) In this article unless the context otherwise requires

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (section 28:5—102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this article and the sections in which they appear are:

"Notation of credit". Section 28:5—108.

"Presenter". Section 28:5—112(3).

(3) Definitions in other articles applying to this article and the sections in which they appear are:

"Accept" or "Acceptance". Section 28:3—410.

"Contract for sale". Section 28:2—106.

"Draft". Section 28:3—104.

"Holder in due course". Section 28:3—302.

"Midnight deadline". Section 28:4—104.

"Security". Section 28:8—102.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§ 28:5—104. Formal requirements; signing

(1) Except as otherwise required in subsection (1)(c) of section 28:5—102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.



(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

§ 28:5—105. Consideration

No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

§ 28:5—106. Time and effect of establishment of credit

(1) Unless otherwise agreed a credit is established

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

§ 28:5—107. Advice of credit; confirmation; error in statement of terms

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

§ 28:5—108. "Notation credit"; exhaustion of credit

(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(2) Under a notation credit

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and



that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(3) If the credit is not a notation credit

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

§ 28:5-109. Issuer's obligation to its customer

(1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge.

§ 28:5-110. Availability of credit in portions; presenter's reservation of lien or claim

(1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying.

§ 28:5-111. Warranties on transfer and presentment

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under articles 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under articles 7 and 8.

§ 28:5-112. Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter"

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand, or credit



(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

§ 28:5—113. Indemnities

(1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

§ 28:5—114. Issuer's duty and privilege to honor; right to reimbursement

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 28:7—507) or of a security (section 28:8—306) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 28:3—302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 28:7—502) or a bona fide purchaser of a security (section 28:8—302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.



(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) (5) (Omitted.)

§ 28:5—115. Remedy for improper dishonor or anticipatory repudiation

(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (section 28:2—707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under section 28:2—710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under section 28:2—610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

§ 28:5—116. Transfer and assignment

(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under article 9 on secured transactions and is governed by that article except that

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

§ 28:5—117. Insolvency of bank holding funds for documentary credit

(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this article is made applicable by paragraphs (a) or (b) of section 28:5—102(1) on scope, the receipt or allocation



of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

ARTICLE 6—BULK TRANSFERS

Sec.

28:6—101. Short title.

28:6—102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.

28:6—103. Transfers excepted from this article.

28:6—104. Schedule of property, list of creditors.

28:6—105. Notice to creditors.

28:6—106. (Omitted.)

28:6—107. The notice.

28:6—108. Auction sales; "auctioneer".

28:6—109. What creditors protected.

28:6—110. Subsequent transfers.

28:6—111. Limitation of actions and levies.

§ 28:6—101. Short title

Citation of article.

This article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers.

§ 28:6—102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (section 28:9—109) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment (section 28:9—109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within the District are subject to this article.

§ 28:6—103. Transfers excepted from this article

The following transfers are not subject to this article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;



(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in the District who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in the District an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

§ 28:6—104. Schedule of property, list of creditors

(1) Except as provided with respect to auction sales (section 28:6—108), a bulk transfer subject to this article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the Recorder of Deeds of the District.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

§ 28:6—105. Notice to creditors

In addition to the requirements of the preceding section, any bulk transfer subject to this article except one made by auction sale (section 28:6—108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (section 28:6—107).



§ 28:6—106. (Omitted.)**§ 28:6—107. The notice**

- (1) The notice to creditors (section 28:6—105) shall state:
 - (a) that a bulk transfer is about to be made; and
 - (b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and
 - (c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.
- (2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:
 - (a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;
 - (b) the address where the schedule of property and list of creditors (section 28:6—104) may be inspected;
 - (c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;
 - (d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.
- (3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (section 28:6—104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

§ 28:6—108. Auction sales; "auctioneer"

- (1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the results stated in this section.
- (2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (section 28:6—104).
- (3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:
 - (a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (section 28:6—104);
 - (b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor.
- (4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

§ 28:6—109. What creditors protected

- (1) The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to



creditors is given (sections 28:6—105 and 28:6—107) are not entitled to notice.

(2) (Omitted.)

§ 28:6—110. Subsequent transfers

When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this article, then:

- (1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but
- (2) a purchaser for value in good faith and without such notice takes free of such defect.

§ 28:6—111. Limitation of actions and levies

No action under this article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.

ARTICLE 7—WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

PART 1—GENERAL

Sec.

- 28:7—101. Short title.
- 28:7—102. Definitions and index of definitions.
- 28:7—103. Relation of article to treaty, statute, tariff, classification or regulation.
- 28:7—104. Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title.
- 28:7—105. Construction against negative implication.

PART 2—WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

- 28:7—201. Who may issue a warehouse receipt; storage under government bond.
- 28:7—202. Form of warehouse receipt; essential terms; optional terms.
- 28:7—203. Liability for non-receipt or misdescription.
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- 28:7—206. Termination of storage at warehouseman's option.
- 28:7—207. Goods must be kept separate; fungible goods.
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PART 3—BILLS OF LADING: SPECIAL PROVISIONS

- 28:7—301. Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.
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PART 4—WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

- 28:7—401. Irregularities in issue of receipt or bill or conduct of issuer.
- 28:7—402. Duplicate receipt or bill; overissue.
- 28:7—403. Obligation of warehouseman or carrier to deliver; excuse.
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ARTICLE 7—WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE— Continued

PART 5—WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER Sec.

- 28:7—501. Form of negotiation and requirements of "due negotiation".
 28:7—502. Rights acquired by due negotiation.
 28:7—503. Document of title to goods defeated in certain cases.
 28:7—504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.
 28:7—505. Indorser not a guarantor for other parties.
 28:7—506. Delivery without indorsement; right to compel indorsement.
 28:7—507. Warranties on negotiation or transfer of receipt or bill.
 28:7—508. Warranties of collecting bank as to documents.
 28:7—509. Receipt or bill: when adequate compliance with commercial contract.

PART 6—WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

- 28:7—601. Lost and missing documents.
 28:7—602. Attachment of goods covered by a negotiable document.
 28:7—603. Conflicting claims; interpleader.

PART 1—GENERAL

§ 28:7—101. Short title

Citation of article.

This article shall be known and may be cited as Uniform Commercial Code—Documents of Title.

§ 28:7—102. Definitions and index of definitions

- (1) In this article, unless the context otherwise requires:
- (a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.
 - (b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.
 - (c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.
 - (d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.
 - (e) "Document" means document of title as defined in the general definitions in article 1 (section 28:1—201).
 - (f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.
 - (g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.
 - (h) "Warehouseman" is a person engaged in the business of storing goods for hire.
- (2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:
- "Duly negotiate" section 28:7—501.
 - "Person entitled under the document" section 28:7—403(4).



(3) Definitions in other articles applying to this article and the sections in which they appear are:

“Contract for sale” section 28:2—106.

“Overseas” section 28:2—323.

“Receipt” of goods section 28:2—103.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§ 28:7—103. Relation of article to treaty, statute, tariff, classification or regulation

To the extent that any treaty or statute of the United States, regulatory statute of the District or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this article are subject thereto.

§ 28:7—104. Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title

(1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

§ 28:7—105. Construction against negative implication

The omission from either part 2 or part 3 of this article of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

PART 2—WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

§ 28:7—201. Who may issue a warehouse receipt; storage under government bond

(1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

§ 28:7—202. Form of warehouse receipt; essential terms; optional terms

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;



(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 28:7—209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this subtitle and do not impair his obligation of delivery (section 28:7—403) or his duty of care (section 28:7—204). Any contrary provisions shall be ineffective.

§ 28:7—203. Liability for non-receipt or misdescription

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

§ 28:7—204. Duty of care; contractual limitation of warehouseman's liability

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable: *Provided, however,* That such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) (Omitted.)



§ 28:7-205. Title under warehouse receipt defeated in certain cases

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

§ 28:7-206. Termination of storage at warehouseman's option

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (section 28:7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

§ 28:7-207. Goods must be kept separate; fungible goods

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

§ 28:7-208. Altered warehouse receipts

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority, may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.



§ 28:7—209. Lien of warehouseman

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 28:7—503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

§ 28:7—210. Enforcement of warehouseman's lien

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.



(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

PART 3—BILLS OF LADING: SPECIAL PROVISIONS

§ 28:7—301. Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling

(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or con-

dition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

§ 28:7—302. Through bills of lading and similar documents

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

§ 28:7—303. Diversion; reconsignment; change of instructions

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or



(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

§ 28:7—304. Bills of lading in a set

(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with part 4 of this article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

§ 28:7—305. Destination bills

(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

§ 28:7—306. Altered bills of lading

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

§ 28:7—307. Lien of carrier

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to



subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

§ 28:7-308. Enforcement of carrier's lien

(1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of section 28:7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

§ 28:7-309. Duty of care; contractual limitation of carrier's liability

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's



tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

PART 4—WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

§ 28:7—401. Irregularities in issue of receipt or bill or conduct of issuer

The obligations imposed by this article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

§ 28:7—402. Duplicate receipt or bill; overissue

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

§ 28:7—403. Obligation of warehouseman or carrier to deliver; excuse

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the article on sales (section 28:2—705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this article (section 28:7—303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under section 28:7—503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document.

§ 28:7—404. No liability for good faith delivery pursuant to receipt or bill

A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

**PART 5—WAREHOUSE RECEIPTS AND BILLS OF LADING:
NEGOTIATION AND TRANSFER**

§ 28:7—501. Form of negotiation and requirements of "due negotiation"

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

§ 28:7—502. Rights acquired by due negotiation

(1) Subject to the following section and to the provisions of section 28:7—205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

- (a) title to the document;
- (b) title to the goods;
- (c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and



(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

§ 28:7—503. Document of title to goods defeated in certain cases

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 28:7—403) or with power of disposition under this subtitle (sections 28:2—403 and 28:9—307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

§ 28:7—504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under section 28:2—402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.



(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under section 28:2—705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

§ 28:7—505. Indorser not a guarantor for other parties

The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

§ 28:7—506. Delivery without indorsement: right to compel indorsement

The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

§ 28:7—507. Warranties on negotiation or transfer of receipt or bill

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

- (a) that the document is genuine; and
- (b) that he has no knowledge of any fact which would impair its validity or worth; and
- (c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

§ 28:7—508. Warranties of collecting bank as to documents

A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

§ 28:7—509. Receipt or bill: when adequate compliance with commercial contract

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the articles on sales (article 2) and on letters of credit (article 5).

PART 6—WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

§ 28:7—601. Lost and missing documents

(1) If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable



for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery.

§ 28:7—602. Attachment of goods covered by a negotiable document

Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

§ 28:7—603. Conflicting claims; interpleader

If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.

ARTICLE 8—INVESTMENT SECURITIES

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PART 1—SHORT TITLE AND GENERAL MATTERS

§ 28:8—101. Short title

Citation of article.

This article shall be known and may be cited as Uniform Commercial Code—Investment Securities.

§ 28:8—102. Definitions and index of definitions

- (1) In this article unless the context otherwise requires
 - (a) A "security" is an instrument which
 - (i) is issued in bearer or registered form; and
 - (ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
 - (iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and
 - (iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.
 - (b) A writing which is a security is governed by this article and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that article. This article does not apply to money.
 - (c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.
 - (d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.
- (2) A "subsequent purchaser" is a person who takes other than by original issue.
- (3) A "clearing corporation" is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.
- (4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.



(5) Other definitions applying to this article or to specified parts thereof and the sections in which they appear are:

"Adverse claim". Section 28:8—301.

"Bona fide purchaser". Section 28:8—302.

"Broker". Section 28:8—303.

"Guarantee of the signature". Section 28:8—102.

"Intermediary bank". Section 28:4—105.

"Issuer". Section 28:8—201.

"Overissue". Section 28:8—104.

(6) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§ 28:8—103. Issuer's lien

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

§ 28:8—104. Effect of overissue; "overissue"

(1) The provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but

(a) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

§ 28:8—105. Securities negotiable; presumptions

(1) Securities governed by this article are negotiable instruments.

(2) In any action on a security

(a) unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (section 28:8—202).

§ 28:8—106. Applicability

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

§ 28:8—107. Securities deliverable; action for price

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.



- (2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price
- (a) of securities accepted by the buyer; and
 - (b) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

PART 2—ISSUE—ISSUER

§ 28:8—201. "Issuer"

- (1) With respect to obligations on or defenses to a security "issuer" includes a person who
- (a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or
 - (b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or
 - (c) becomes responsible for or in place of any other person described as an issuer in this section.
- (2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.
- (3) With respect to registration of transfer (part 4 of this article) "issuer" means a person on whose behalf transfer books are maintained.

§ 28:8—202. Issuer's responsibility and defenses; notice of defect or defense

(1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (section 28:8—205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.



(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

§ 28:8—203. Staleness as notice of defects or defenses

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not covered by paragraph (a) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

§ 28:8—204. Effect of issuer's restrictions on transfer

Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

§ 28:8—205. Effect of unauthorized signature on issue

An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

§ 28:8—206. Completion or alteration of instrument

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

§ 28:8—207. Rights of issuer with respect to registered owners

(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.



§ 28:8—208. Effect of signature of authenticating trustee, registrar or transfer agent

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

- (a) the security is genuine; and
- (b) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and
- (c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

PART 3—PURCHASE

§ 28:8—301. Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

§ 28:8—302. "Bona fide purchaser"

A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

§ 28:8—303. "Broker"

"Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

§ 28:8—304. Notice to purchaser of adverse claims

(1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

(a) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute



notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

§ 28:8—305. Staleness as notice of adverse claims

An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase

(a) after one year from any date set for such presentment or surrender for redemption or exchange; or

(b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

§ 28:8—306. Warranties on presentment and transfer

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or re-registered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (section 28:8—311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that

(a) his transfer is effective and rightful; and

(b) the security is genuine and has not been materially altered; and

(c) he knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

§ 28:8—307. Effect of delivery without indorsement; right to compel indorsement

Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.



§ 28:8—308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) "An appropriate person" in subsection (1) means

(a) the person specified by the security or by special indorsement to be entitled to the security; or

(b) where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(c) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this article by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this article.

§ 28:8—309. Effect of indorsement without delivery

An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

§ 28:8—310. Indorsement of security in bearer form

An indorsement of a security in bearer form may give notice of adverse claims (section 28:8—304) but does not otherwise affect any right to registration the holder may possess.



§ 28:8—311. Effect of unauthorized indorsement

Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (section 28:8—404).

§ 28:8—312. Effect of guaranteeing signature or indorsement

(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) the signature was genuine; and

(b) the signer was an appropriate person to indorse (section 28:8—308); and

(c) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

§ 28:8—313. When delivery to the purchaser occurs; purchaser's broker as holder

(1) Delivery to a purchaser occurs when

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries on the books of a clearing corporation are made under section 28:8—320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.



§ 28:8—314. Duty to deliver, when completed

(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (1).

§ 28:8—315. Action against purchaser based upon wrongful transfer

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this article on unauthorized indorsements (section 28:8—311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

§ 28:8—316. Purchaser's right to requisites for registration of transfer on books

Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

§ 28:8—317. Attachment or levy upon security

(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard



to property which cannot readily be attached or levied upon by ordinary legal process.

§ 28:8—318. No conversion by good faith delivery

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

§ 28:8—319. Statute of frauds

A contract for the sale of securities is not enforceable by way of action or defense unless

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

§ 28:8—320. Transfer or pledge within a central depository system

(1) If a security

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (section 28:8—301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 28:9—304 and 28:9—305). A transferee or pledgee under this section is a holder.



(4) A transfer or pledge under this section does not constitute a registration of transfer under part 4 of this article.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

PART 4—REGISTRATION

§28:8—401. Duty of issuer to register transfer

(1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if

(a) the security is indorsed by the appropriate person or persons (section 28:8—308); and

(b) reasonable assurance is given that those indorsements are genuine and effective (section 28:8—402); and

(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (section 28:8—403); and

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

§ 28:8—402. Assurance that indorsements are effective

(1) The issuer may require the following assurance that each necessary indorsement (section 28:8—308) is genuine and effective

(a) in all cases, a guarantee of the signature (subsection (1) of section 28:8—312) of the person indorsing; and

(b) where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained



pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection 3(b) both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

§ 28:8—403. Limited duty of inquiry

(1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 28:8—402.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 28:8—402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.



§ 28:8—404. Liability and non-liability for registration

(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

(a) there were on or with the security the necessary indorsements (section 28:8—308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (section 28:8—403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by section 28:8—104.

§ 28:8—405. Lost, destroyed and stolen securities

(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 28:8—104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

§ 28:8—406. Duty of authenticating trustee, transfer agent or registrar

(1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.



§ 28:8—407. Limitation of actions

(1) In the event of registration, either before or after this subtitle becomes effective, of a transfer or purported transfer of a security to a person not entitled to it, no action of any kind, legal or equitable, to compel the issue, reissue or delivery of a like security or to obtain damages or any other relief as a result of or in connection with such registration may be brought, subject to subsection (2), by the true owner or any other person against an issuer, authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities, more than eight years after the date on which such registration to a person not entitled has taken place.

(2) The time limitations in subsections (1) and (3) of this section may not be tolled or suspended for any reason. This section is additional to, and does not prevent or affect the application of, any other statute of limitations as a defense to any action. This section applies to claims or causes of action which have accrued before this subtitle becomes effective as well as to those which accrue after this subtitle becomes effective. This section does not apply to any action against an issuer which at the time of such registration has fewer than fifty persons registered upon books maintained for that purpose as holders of the class and series, if any, of the security so registered to the person not entitled to it.

(3) If the eight year period specified in this section expires prior to one year after the effective date of this subtitle, such period is extended to one year after such effective date.

ARTICLE 9—SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

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ARTICLE 9—SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER—Continued

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PART 1—SHORT TITLE, APPLICABILITY AND DEFINITIONS

§ 28:9—101. Short title

This article shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

§ 28:9—102. Policy and scope of article

(1) Except as otherwise provided in section 28:9—103 on multiple state transactions and in section 28:9—104 on excluded transactions, this article applies so far as concerns any personal property and fixtures within the jurisdiction of the District



(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 28:9—310.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

§ 28:9—103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest

(1) If the office where the assignor of accounts or contract rights keep his records concerning them is in the District, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in the District, this article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in the District. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into the District, the validity of the security interest in the District is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in the District and it was brought into the District within 30 days after the security interest attached for purposes other than transportation through the District, then the validity of the security interest in the District is to be determined by the law of the District. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into the District, the security interest continues perfected in the District for four months and also thereafter if within the four month period it is perfected in the District. The se-



curity interest may also be perfected in the District after the expiration of the four month period; in such case perfection dates from the time of perfection in the District. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into the District, it may be perfected in the District; in such case perfection dates from the time of perfection in the District.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of the District or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

(5) Notwithstanding subsection (1) and section 28:9—302, if the office where the assignor of accounts or contract rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of the District or the transaction which creates the security interest otherwise bears an appropriate relation to the District, this article governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor.

§ 28:9—104. Transactions excluded from article

This article does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in section 28:9—310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock; or

(f) to a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or

(h) to a right represented by a judgment; or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in section 28:9—313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

§ 28:9—105. Definitions and index of definitions

(1) In this article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a



lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of article 1 (section 28:1-201);

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 28:9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in section 28:3-104), or a security (defined in section 28:8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account". Section 28:9-106.

"Consumer goods". Section 28:9-109(1).

"Contract right". Section 28:9-106.

"Equipment". Section 28:9-109(2).

"Farm products". Section 28:9-109(3).

"Filing Office". Section 28:9-401(1).

"General intangibles". Section 28:9-106.

"Inventory". Section 28:9-109(4).

"Lien creditor". Section 28:9-301(3).

"Proceeds". Section 28:9-306(1).

"Purchase money security interest". Section 28:9-107.

(3) The following definitions in other articles apply to this article:

"Check". Section 28:3-104.

"Contract for sale". Section 28:2-106.

"Holder in due course". Section 28:3-302.

"Note". Section 28:3-104.

"Sale". Section 28:2-106.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.



§ 28:9—106. Definitions: “account”; “contract right”; “general intangibles”

“Account” means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. “Contract right” means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. “General intangibles” means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

§ 28:9—107. Definitions: “purchase money security interest”

A security interest is a “purchase money security interest” to the extent that it is

- (a) taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

§ 28:9—108. When after-acquired collateral not security for antecedent debt

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

§ 28:9—109. Classification of goods; “consumer goods”; “equipment”; “farm products”; “inventory”

Goods are

- (1) “consumer goods” if they are used or bought for use primarily for personal, family or household purposes;
- (2) “equipment” if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;
- (3) “farm products” if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;
- (4) “inventory” if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

§ 28:9—110. Sufficiency of description

For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

§ 28:9—111. Applicability of bulk transfer laws

The creation of a security interest is not a bulk transfer under article 6 (see section 28:6—103).



§ 28:9—112. Where collateral is not owned by debtor

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 28:9—502(2) or under section 28:9—504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

- (a) to receive statements under section 28:9—208;
- (b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 28:9—505;
- (c) to redeem the collateral under section 28:9—506;
- (d) to obtain injunctive or other relief under section 28:9—507(1); and
- (e) to recover losses caused to him under section 28:9—208(2).

§ 28:9—113. Security interests arising under article on sales

A security interest arising solely under the article on sales (article 2) is subject to the provisions of this article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

- (a) no security agreement is necessary to make the security interest enforceable; and
- (b) no filing is required to perfect the security interest; and
- (c) the rights of the secured party on default by the debtor are governed by the article on sales (article 2).

PART 2—VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

§ 28:9—201. General validity of security agreement

Except as otherwise provided by this title a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

§ 28:9—202. Title to collateral immaterial

Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

§ 28:9—203. Enforceability of security interest; proceeds, formal requisites

(1) Subject to the provisions of section 28:4—208 on the security interest of a collecting bank and section 28:9—113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties unless

- (a) the collateral is in the possession of the secured party; or
- (b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this article, is also subject to chapter 20 of Title 2, relating to pawnbrokers, chapter 6 of Title 26, relating to money lenders, chapter 7 of Title 40, relating to liens

D.C. Code 2-
2001 to 2-2019;
26-601 to 26-611;
40-701 to 40-715.



D.C. Code 40-901 to 40-910.

on motor vehicles, and chapter 9 of Title 40, relating to installment sales of motor vehicles, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

§ 28:9—204. When security interest attaches; after-acquired property; future advances

(1) A security interest cannot attach until there is agreement (subsection (3) of section 28:1—201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods other than accessions (section 28:9—314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

§ 28:9—205. Use or disposition of collateral without accounting permissible

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

§ 28:9—206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instru-



ment under the article on commercial paper (article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on sales (article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

§ 28:9—207. Rights and duties when collateral is in secured party's possession

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

§ 28:9—208. Request for statement of account or list of collateral

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to dis-



close. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

PART 3—RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

§ 28:9—301. Persons who take priority over unperfected security interests; "lien creditor"

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under section 28:9—312;

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

§ 28:9—302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 28:9—305;

(b) a security interest temporarily perfected in instruments or documents without delivery under section 28:9—304 or in proceeds for a 10 day period under section 28:9—306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of \$2,500; but filing is required for a fixture under section 28:9—313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under section 28:9—313 or for a motor vehicle required to be licensed;



(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (section 28:4—208) or arising under the article on sales (see section 28:9—113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this article do not apply to a security interest in property subject to a statute

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of the United States pertaining to the District which provides for central filing of security interests in a motor vehicle or trailer which is not inventory held for sale for which a certificate of title is required to be issued under the provisions of chapter 7 of Title 40.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

§ 28:9—303. When security interest is perfected; continuity of perfection

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 28:9—302, 28:9—304, 28:9—305, and 28:9—306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article.

§ 28:9—304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of



21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article.

§ 28:9—305. When possession by secured party perfects security interest without filing

A security interest in letters of credit and advices of credit (subsection (2) (a) of section 28:5—116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party.

§ 28:9—306. "Proceeds"; secured party's rights on disposition of collateral

(1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

(a) in identifiable non-cash proceeds;



(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 28:9—308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

§ 28:9—307. Protection of buyers of goods

(1) A buyer in ordinary course of business (subsection (9) of section 28:1—201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of \$2,500 (other than fixtures, see section 28:9—313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.



§ 28:9—308. Purchase of chattel paper and non-negotiable instruments

A purchaser of chattel paper or a non-negotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under section 28:9—304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (section 28:9—306), even though he knows that the specific paper is subject to the security interest.

§ 28:9—309. Protection of purchasers of instruments and documents

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 28:3—302) or a holder to whom a negotiable document of title has been duly negotiated (section 28:7—501) or a bona fide purchaser of a security (section 28:8—301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.

§ 28:9—310. Priority of certain liens arising by operation of law

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

§ 28:9—311. Alienability of debtor's rights: judicial process

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

§ 28:9—312. Priorities among conflicting security interests in the same collateral

(1) The rules of priority stated in the following sections shall govern where applicable: section 28:4—208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; section 28:9—301 on certain priorities; section 28:9—304 on goods covered by documents; section 28:9—306 on proceeds and repossessions; section 28:9—307 on buyers of goods; section 28:9—308 on possessory against non-possessory interests in chattel paper or non-negotiable instruments; section 28:9—309 on security interests in negotiable instruments, documents or securities; section 28:9—310 on priorities between perfected security interests and liens by operation of law; section 28:9—313 on security interests in fixtures as against interests in real estate; section 28:9—314 on security interests in accessions as against interest in goods; section 28:9—315 on conflicting security interests where goods lose their identity or become part of a product; and section 28:9—316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest



secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under section 28:9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under section 28:9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under section 28:9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

§ 28:9-313. Priority of security interests in fixtures

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this article unless the structure remains personal property under applicable law. The law of the District other than this subtitle determines whether and when other goods become fixtures. This subtitle does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the

security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

§ 28:9—314. Accessions

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to section 28:9—315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.



(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

§ 28:9—315. Priority when goods are commingled or processed

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

- (a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or
- (b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 28:9—314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

§ 28:9—316. Priority subject to subordination

Nothing in this article prevents subordination by agreement by any person entitled to priority.

§ 28:9—317. Secured party not obligated on contract of debtor

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

§ 28:9—318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 28:9—206 the rights of an assignee are subject to

- (a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
- (b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned



and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

PART 4—FILING

§ 28:9—401. Place of filing; erroneous filing; removal of collateral

(1) The proper place to file in order to perfect a security interest is, in all cases, in the office of the Recorder of Deeds of the District. In this article, "filing officer" means said Recorder.

(2) A filing which is made in good faith in an improper place is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into the District from another jurisdiction, the rules stated in section 28:9—103 determine whether filing is necessary in the District.

§ 28:9—402. Formal requisites of financing statement; amendments

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into the District. Such a financing statement must state that the collateral was brought into the District under such circumstances.

(b) proceeds under section 28:9—306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.



(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)-----

Address-----

Name of secured party (or assignee)-----

Address-----

1. This financing statement covers the following types (or items) of property:

(Describe)-----

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate)-----

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe Real Estate)-----

4. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered.

Signature of Debtor (or Assignor)-----

Signature of Secured Party (or Assignee)-----

(4) The term "financing statement" as used in this article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

§ 28:9—403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.



(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be \$2.00.

§ 28:9-404. Termination statement

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be \$2.00. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

(3) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be \$2.00.

§ 28:9-405. Assignment of security interest; duties of filing officer; fees

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 28:9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be \$2.00.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$2.00.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

§ 28:9—406. Release of collateral; duties of filing officer; fees

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall attach the statement of release to the instrument to which it relates and shall enter on the released instrument and on the index record thereof the word "released", the date of filing of the statement of release, and a facsimile of his signature. The uniform fee for filing and noting such a statement of release shall be \$2.00.

§ 28:9—407. Information from filing officer

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be \$1.00 plus \$0.50 for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing, continuation or termination statement or statement of assignment or release for a uniform fee of \$3.00 for the first two pages or less, and \$1.00 for each additional page, plus \$0.50 for certification.

PART 5—DEFAULT**§ 28:9—501. Default; procedure when security agreement covers both real and personal property**

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 28:9—207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in section 28:9—207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of section 28:9—505) and with respect to redemption of collateral (section 28:9—506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of section 28:9—502 and subsection (2) of section 28:9—504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of section 28:9—504 and subsection (1) of section 28:9—505 which deal with disposition of collateral;

(c) subsection (2) of section 28:9—505 which deals with acceptance of collateral as discharge of obligation;

(d) section 28:9—506 which deals with redemption of collateral; and

(e) subsection (1) of section 28:9—507 which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

§ 28:9—502. Collection rights of secured party

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 28:9—306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

§ 28:9—503. Secured party's right to take possession after default

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 28:9—501.

§ 28:9—504. Secured party's right to dispose of collateral after default; effect of disposition

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to



(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in the District or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article.



§ 28:9—505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation

(1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under section 28:9—504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under section 28:9—507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in the District or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within thirty days from the receipt of the notification or if any other secured party objects in writing within thirty days after the secured party obtains possession the secured party must dispose of the collateral under section 28:9—504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

§ 28:9—506. Debtor's right to redeem collateral

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under section 28:9—504 or before the obligation has been discharged under section 28:9—505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

§ 28:9—507. Secured party's liability for failure to comply with this part

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold



he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

ARTICLE 10—CONSTRUCTION WITH OTHER LAWS

Sec.

28:10—101. (Omitted.)

28:10—102. (Omitted.)

28:10—103. Inconsistent laws; what law governs.

28:10—104. Laws not repealed.

§ 28:10—101. (Omitted.)

§ 28:10—102. (Omitted.)

§ 28:10—103. Inconsistent laws; what law governs

Except as provided by section 28:10—104, if any provision of law is inconsistent with this subtitle, this subtitle shall govern, unless this subtitle or the inconsistent provision of the other law specifically provides otherwise.

§ 28:10—104. Laws not repealed

(1) The article on documents of title (article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 28:1—201).

(2) This subtitle does not supersede or modify the District of Columbia Uniform Act for Simplification of Fiduciary Security Transfers, approved July 3, 1960 (74 Stat. 322), being all of subchapter II of chapter 23 of Title 28 of the District of Columbia Code, 1961 edition, and if in any respect there is any inconsistency between that Act and article 8 of this subtitle relating to investment securities, the provisions of that Act, rather than article 8, control.

D.C. Code 28-2321 to 28-2330.

Sec. 2. Section 1265 of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1389; D.C. Code, 1961 ed., sec. 12-201), as amended by the Act approved June 30, 1902 (chapter 1329, 32 Stat. 542), is amended by adding at the end thereof the following paragraph:

"This section does not apply to actions for breach of contracts for sale governed by section 28:2—725 of the District of Columbia Code."

Sec. 3. (a) Section 839 of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1326; D.C. Code, 1961 ed., sec. 22-1209), is amended to read as follows:

"(a) A person or any legal successor in interest of such person, having executed a security agreement creating a security interest in personal property securing a monetary obligation owed to a secured party and having under the security agreement:

Security interest in personal property.

"(1) both the right of sale or other disposition of the property and the duty to account to the secured party for the proceeds of the disposition, sells or otherwise disposes of the property but willfully and wrongfully fails to account to the secured party for proceeds of disposition; or



"(2) no right of sale or other disposition of the property, willfully and wrongfully secretes, withholds, sells, or disposes of the property, or converts it to his own use, or, without the consent of the secured party, removes it out of the District, or maliciously injures or destroys it, in violation of the security agreement—

if the lesser of the value of the proceeds not so accounted for or of the property so secreted, withheld, sold, disposed of, converted, removed, or injured or destroyed, or, in either case, of the unpaid balance of the monetary obligation so secured, is more than \$100, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; or, if the lesser of any of the values as herein described is \$100 or less, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(b) In a case in which a debtor in possession of personal property subject to a security interest, who would be guilty of an offense under this section, is a corporation or a partnership, an officer, director, partner, or agent of the debtor who aids or abets in the commission of the offense shall be punished as provided by subsection (a) of this section.

"(c) As used in this section, 'security agreement', 'security interest', and 'secured party' have the same meanings as those given to the terms by sections 28:9—105(h), 28:1—201(38), and 28:9—105(i), respectively, of the District of Columbia Code."

Certificate representing shares.

SEC. 4. Subsection (b) of section 20 of the Act approved June 8, 1954 (ch. 269, 68 Stat. 189; D.C. Code, 1961 ed., sec. 29-908g(b)), as amended by section 3 of the Act approved July 23, 1959 (Pub. L. 86-106, 73 Stat. 240), is amended to read as follows:

"(b) Notwithstanding the provisions of section 28:8—204 of the District of Columbia Code, every certificate representing shares the transferability of which is restricted or limited shall state upon the face thereof that the transferability of such shares is restricted or limited and upon the face or back thereof shall either set forth a full or summary statement of any such restriction or limitation upon the transferability of such shares or shall state that the corporation will furnish to any shareholder upon request and without charge such full or summary statement."

SEC. 5. Section 2 of the Act approved June 3, 1952 (chapter 361, 66 Stat. 97; D.C. Code, 1961 ed., sec. 38-205), is amended to read as follows:

Motor vehicles, lien for storage, repairs, etc.

"SEC. 2. (a) All persons storing, repairing, or furnishing supplies of or concerning motor vehicles including trailers shall have a lien for their agreed or reasonable charges for such storage, repairs, and supplies when such charges are incurred by an owner or conditional vendee or chattel mortgagor (including a grantor of deed of trust in lieu of mortgage) of such motor vehicle, and may detain such motor vehicle at any time they may have lawful possession thereof. Such lien shall have priority over every security interest and other lien or right in or to the vehicle except as hereinafter limited with respect to claims for storage. Before enforcing such lien, notice in writing shall be given to the title holder, every secured party and other lien holder shown by the certificate of title or registry of the vehicle, and any other persons known to claimant who have any interest in or lien upon the vehicle. Such notice shall be delivered personally or sent by registered mail to the last-known address of the person to whom given, shall state that a lien is claimed for the charges therein set forth or thereto attached, and shall demand payment thereof. There shall be incorporated in or attached to said notice a statement of particulars of the charge or charges for which a lien is claimed, to



which may be added a claim for storage of the vehicle from the date of said notice to the date of payment or sale, which amount shall be set forth at a daily or weekly rate which shall not be in excess of charges prevailing at the time for similar storage, and shall not be in excess of \$3 per day or \$21 per week, which additional charge shall in no event cover a period in excess of ninety days.

"(b) As used in this section, 'security interest' and 'secured party' have the same meanings as those given to the terms by sections 28:1—201 and 28:9—105(i), respectively, of the District of Columbia Code."

SEC. 6. (a) The definitions of "Lien", "Instrument", and "Lien Information" in section 1 of the Act approved July 2, 1940 (chapter 527, 54 Stat. 736; D.C. Code, 1961 ed., sec. 40-701) are amended to read as follows:

Definitions.

"Lien" shall mean any right or interest in or to, any security interest as defined in section 28:1—201 of the District of Columbia Code in, or lien or encumbrance upon any motor vehicle or trailer, or the equipment or accessories affixed or sold to be affixed thereto, in favor of a person other than the owner, except (1) a sale of such motor vehicle or trailer accompanied by delivery of possession and on execution of the assignment on the back of the certificate covering it, or (2) any possessory lien now or hereafter provided by law or any lien acquired in any judicial proceeding.

"Instrument" shall mean any security agreement, as defined in section 28:9—105(h) of the District of Columbia Code, creating such lien.

"Lien information" shall mean the amount, kind, date of lien, name and address of holder or secured party as defined in section 28:9—105(i) of the District of Columbia Code, and recorder's record number, if any.

(b) The second sentence of section 2 of the Act approved July 2, 1940 (chapter 527, 54 Stat. 736; D.C. Code, 1961 ed., sec. 40-702), is amended to read as follows: "The filing provisions of Article 9 of Subtitle I of Title 28 of the District of Columbia Code do not apply to liens recorded as herein provided, and a lien has no greater validity or effect during the time a certificate is outstanding for the motor vehicle or trailer covered thereby by reason of the fact that the lien has been filed in accordance with that article."

SEC. 7. The first sentence of section 4 of the Act approved July 2, 1940 (chapter 527, 54 Stat. 737; D.C. Code, 1961 ed., sec. 40-704), as amended by section 1 of the Act approved June 4, 1952 (chapter 365, 66 Stat. 100), is amended by striking out at the end thereof the following words: "and acknowledged by the owner in the manner provided by law for deeds of real estate".

SEC. 8. The first sentence of section 8 of the Act approved July 2, 1940 (chapter 527, 54 Stat. 738; D.C. Code, 1961 ed., sec. 40-708), as amended by section 2 of the Act approved June 4, 1952 (chapter 365, 66 Stat. 100), is amended by striking out at the end thereof the following words: "and acknowledged by him in the manner provided by law for deeds of real estate".

SEC. 9. (a) Paragraph (9) of section 1 of the Act approved April 22, 1960 (Pub. L. 86-431, 74 Stat. 69; D.C. Code, 1961 ed., sec. 40-901 (9)), is amended to read as follows:

"(9) 'Retail installment contract' means a contract entered into in the District or entered into by a seller licensed or required to be licensed by the District evidencing a retail installment transaction pursuant to which the title to or a lien on, or security or a security interest in, the motor vehicle, which is the subject matter of the transaction, is retained or taken to secure, in whole or in part, the retail

"Retail installment contract."



buyer's obligations. The term includes a security agreement, chattel mortgage, conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the motor vehicle sold and it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the bailment or lease."

(b) Section 1 of the Act approved April 22, 1960 (Pub. L. 86-431, 74 Stat. 69; D.C. Code, 1961 ed., sec. 40-901), is further amended by adding at the end thereof the following paragraph:

"(11) 'Security interest' and 'secured party' have the same meanings as those given to the terms in sections 28:1-201 and 28:9-105(i) of the District of Columbia Code."

SEC. 10. Section 546-C of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1275; D.C. Code, 1961 ed., sec. 42-102), as so renumbered and amended by section 2 of the Act approved June 5, 1952 (chapter 370, 66 Stat. 126), is amended to read as follows:

Recorder of
Deeds.
Financing state-
ments.

"SEC. 546-C. It is not necessary for the Recorder of Deeds to spread upon the records of his office the financing statements or other papers filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, but they shall be indexed and, except as hereinafter provided, shall be kept on file and shall be open to inspection by the public, and shall have the same force and legal effect as if they were actually recorded in the books of his office."

SEC. 11. Section 546-D of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1189), as added by section 3 of the Act approved June 5, 1952 (chapter 370, 66 Stat. 126; D.C. Code, 1961 ed., sec. 42-104), and amended by section 1 of the Act approved June 18, 1953 (chapter 126, 67 Stat. 64), is amended to read as follows:

Void instru-
ments.
Disposal.

"SEC. 546-D. (a) Unless the Recorder of Deeds has notice of an action pending relative thereto, he may remove from the files and destroy:

"(1) an instrument filed in his office pursuant to sections 546-A and 546-B, as amended, of the code of law for the District of Columbia approved March 3, 1901 (chapter 854, 31 Stat. 1275), as so renumbered by the Act approved June 5, 1952, chapter 370, sec. 1, 66 Stat. 126 (D.C. Code, 1961 ed., secs. 42-101 and 42-103) or pursuant to the Act approved July 2, 1940 (chapter 527, 54 Stat. 736; D.C. Code, 1961 ed., secs. 40-701 to 40-712, 40-713 to 40-715), as amended, which has become void or lapsed, and which has been void or lapsed for one year or more, together with any affidavit, release, assignment, or continuation or termination statement relating thereto;

"(2) a lapsed financing statement, a lapsed continuation statement, a statement of assignment or release relating to either, filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, and any index of any of them, one year or more after lapse of the financing statement and every continuation statement relating thereto; and

"(3) a termination statement filed pursuant to section 28:9-404 of the District of Columbia Code, and the index on which it is noted, one year or more after the filing of the termination statement.

"(b) Subsection (a) of this section does not apply to a bill of sale, mortgage, deed of trust, conditional sale of, financing statement or security agreement covering, railroad rolling stock."



SEC. 12. Section 546-F of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1189), as added by section 3 of the Act approved June 5, 1952 (chapter 370, 66 Stat. 126; D.C. Code, 1961 ed., sec. 42-106), is amended to read as follows:

"SEC. 546-F. When a financing statement filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code has not lapsed, but all the collateral described in the financing statement has been released in the manner provided by Part 4 thereof, the Recorder of Deeds may, after the expiration of three years from the date of the filing of the statement releasing all the collateral, destroy the financing statement and each continuation statement, statement of assignment, and statement of release relating thereto."

Destruction of
released instru-
ments.

SEC. 13. Section 546-G of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1189), as added by section 3 of the Act approved June 5, 1952 (chapter 370, 66 Stat. 126; D.C. Code, 1961 ed., sec. 42-107), is amended to read as follows:

"SEC. 546-G. (a) Whoever intentionally makes a false statement with respect to a financing statement or other paper filed with the Recorder of Deeds pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, or, after receipt of payment in full of the debt secured thereby, neglects or refuses, after written demand by the debtor, to send to the debtor a termination statement as provided by section 28:9-404 of the Code, shall be fined not more than \$500 or imprisoned not more than one year, or both.

False state-
ments.
Penalty.

"(b) Prosecutions for violations of this subchapter shall be by the Corporation Counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia."

"(c) As used in subsection (b) of this section 'Corporation Counsel' means the attorney for the District of Columbia, by whatever title the attorney may be designated by the Board of Commissioners of the District of Columbia."

SEC. 14. Section 548 of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1275; D.C. Code, 1961 ed., sec. 45-701), as amended, is amended to read as follows:

"SEC. 548. (a) There shall be a Recorder of Deeds of the District, appointed by the Commissioners of the District of Columbia, who shall:

Recorder of
Deeds.
Appointment.

"(1) except as provided by clause (2) of this subsection, record all deeds, contracts, and other instruments in writing affecting the title or ownership of real estate or personal property which have been duly acknowledged and certified;

"(2) accept for filing, without acknowledgment or certification, all instruments, financing statements and other papers filed in his office pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, and the Act of July 2, 1940 (chapter 527, 54 Stat. 736; D.C. Code, 1961 ed., secs. 40-701 to 40-712, 40-713 to 40-715).

"(3) perform all requisite services connected with the duties prescribed in clauses (1) and (2) of this subsection; and

"(4) have charge and custody of all the records, papers, and property appertaining to his office.

"(b) A person may not be appointed Recorder of Deeds unless he has been a resident of the District of Columbia for at least five years next preceding his appointment.

"(c) The performance, by the Recorder of Deeds and officers and employees in his office, of their duties and functions shall be subject to the supervision and control of the Commissioners of the District."



Repeals.

SEC. 15. (a) The following Act and parts of Acts, as amended, are hereby repealed:

(1) Section 833a of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1189), as added by the Act approved April 28, 1904 (chapter 1808, 33 Stat. 554), and amended by the Act approved May 27, 1921 (chapter 13, 42 Stat. 9; D.C. Code, 1961 ed., sec. 22-1406).

(2) Sections 1304 to 1493, inclusive, of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1395-1414), such sections being known as the Negotiable Instruments Law (D.C. Code, 1961 ed., Title 28, chapters 1 to 10, inclusive, except secs. 28-410, 28-714a, 28-920, 28-1004, 28-1008 to 28-1011, inclusive), except that, with respect to section 1389 of such code of laws for the District of Columbia (31 Stat. 1404; D.C. Code, 1961 ed., sec. 28-616), as amended, this repeal applies only to the first three sentences thereof.

(3) Sections 1, 3, 6 and 7 of the Act approved April 5, 1939 (chapter 37, 53 Stat. 566, 567; D.C. Code, 1961 ed., secs. 28-1004, 28-1008 to 28-1010, inclusive).

(4) Sections 1 to 5, inclusive, of the Act approved July 26, 1949 (chapter 365, 63 Stat. 481, 482; D.C. Code, 1961 ed., sec. 28-1011).

(5) Sections 1 to 3, inclusive, of the Act approved August 7, 1950 (chapter 602, 64 Stat. 416, 417; D.C. Code, 1961 ed., sec. 28-714a).

(6) Sections 1 to 76a, inclusive, and 79 of the Act approved March 17, 1937 (chapter 43, 50 Stat. 29-48; D.C. Code, 1961 ed., Title 28, chapters 11 to 16, inclusive), known as the Uniform Sales Act.

(7) Sections 1 to 5, inclusive, of the Act approved April 28, 1904 (chapter 1809, 33 Stat. 555, 556; D.C. Code, 1961 ed., secs. 28-1701 to 28-1705, inclusive), relating to bulk sales.

(8) Sections 1 to 49, inclusive, 56 to 59, inclusive, and 62 of the Act approved April 15, 1910 (chapter 167, 36 Stat. 301-311; D.C. Code, 1961 ed., Title 28, chapters 18, 19 (except sec. 28-1918 thereof), 20 and 22), constituting part of the Warehouse Receipts Act.

(9) Section 1621 of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1432; D.C. Code, 1961 ed., sec. 28-1918).

(10) Sections 1 to 26, inclusive, of the Act approved December 23, 1944 (chapter 729, 58 Stat. 927-932; D.C. Code, 1961 ed., secs. 28-2901, 28-2901 notes, 28-2902 to 28-2923, inclusive) constituting the Uniform Stock Transfer Act.

(11) Sections 546-A and 546-B, as amended, of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1275), as so renumbered by the Act approved June 5, 1952, chapter 370, sec. 1, 66 Stat. 126 (D.C. Code, 1961 ed., secs. 42-101 and 42-103).

(12) Section 546-E of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1189), as added by the Act approved June 5, 1952, chapter 370, sec. 3, 66 Stat. 126 (D.C. Code, 1961 ed., sec. 42-105).

(13) Section 1119 of the code of law for the District of Columbia, approved March 3, 1901 (chapter 854, 31 Stat. 1368; D.C. Code, 1961 ed., sec. 12-304).



(b) Except as provided by subsection (c) of this section, transactions validly entered into before the effective date specified in section 16 of this Act, and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred.

(c) The perfection of a security interest, as defined in section 28:1—201 of the District of Columbia Code, and however denominated in any law repealed by this Act, which was perfected when this Act takes effect by a filing, refiling or recording under a law repealed by this Act and requiring a further filing, refiling or recording to continue its perfection, continue until and will lapse on the date provided by the law so repealed for such further filing, refiling or recording, unless in such case, a continuation statement is filed, in the office of the Recorder of Deeds of the District, by the secured party within twelve months before the perfection of the security interest would otherwise lapse. Any such continuation statement must be signed by the secured party, identifying the original security agreement, however denominated, state the date of the last filing, refiling or recording and the filing number, and further state that the original security agreement is still effective. Except as herein specified, the provisions of section 28:9—403(3) of the Code apply to such a continuation statement.

(d) The following British statutes shall no longer have any force or effect in the District of Columbia:

(1) 9 and 10 William III (1698), chapter 17, sec. 3 (D.C. Code, 1961 ed., sec. 28-410).

(2) 3 and 4 Anne (1704), chapter 9, secs. 7 and 8 (D.C. Code, 1961 ed., sec. 28-920).

SEC. 16. This Act shall become effective on January 1, 1965. Laws enacted after the approval of this Act, that are inconsistent with this Act, supersede it to the extent of the inconsistency.

Approved December 30, 1963.

Effective date.

Public Law 88-244

JOINT RESOLUTION

To provide for participation by the Government of the United States in the Hague Conference on Private International Law and the International (Rome) Institute for the Unification of Private Law, and authorizing appropriations therefor.

December 30, 1963
[H. J. Res. 778]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized to accept membership for the Government of the United States in (1) the Hague Conference on Private International Law and (2) the International (Rome) Institute for the Unification of Private Law, and to appoint the United States delegates and their alternates to meetings of the two organizations, and the committees and organs thereof.

Hague Conference on Private International Law, U. S. participation.

SEC. 2. There is authorized to be appropriated such sums as may be necessary, not to exceed \$25,000 annually, for the payment by the United States of (1) its proportionate share of the expenses of the Hague Conference on Private International Law and of the International (Rome) Institute for the Unification of Private Law, and (2) all other necessary expenses incident to participation by the United States in the activities of the two organizations referred to in clause (1) of this section.

Appropriations.

Approved December 30, 1963.

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Rec Fee: \$30.00 Darrell Hill
Gila County, Az. Sadie Jo Bingham, Recorder

Proof-of-Claim – C. 4 / 4

D&B D-U-N-S® Numbers

us dofta

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soa

jcotsoa

com

cop

sboa

pchacd:

casa

grande

pchacd:

apache-

Junction

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Gila County, Az, Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

11/24/2021

The following is the Dun & Bradstreet D-U-N-S® number for:

UNITED STATES DEPARTMENT OF THE ARMY:

D-U-N-S number: 117358447

GOVERNMENT OF THE UNITED STATES:

D-U-N-S number: 161906193

STATE OF ARIZONA

D-U-N-S number: 072459266

JUDICIARY COURTS OF THE STATE OF ARIZONA:

D-U-N-S number: 620893818

COUNTY OF MARICOPA:

D-U-N-S number: 005164487

COUNTY OF PINAL

D-U-N-S number: 074447095

STATE BAR OF ARIZONA:

D-U-N-S number: 836504225

PINAL COUNTY HOUSING AND COMMUNITY DEVELOPMENT

D-U-N-S number: 014414804

970 N Eleven Mile Corner Rd

Casa Grande, AZ, 85194-7242

United States

(520) 866-7201

PINAL COUNTY HOUSING AND COMMUNITY DEVELOPMENT

733 S TOMAHAWK RD

APACHE JUNCTION, ARIZONA 85119-2579

The following is the Dun & Bradstreet D-U-N-S® number for PINAL COUNTY HOUSING AND COMMUNITY DEVELOPMENT:

D-U-N-S number: 030055490

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Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder



Copy

Proof-of-Claim – D. 1 /1

Document: 3 day- Notice:

**Re: Pinal-County-Arizona – Trustees c/o the man- Jay-Roy: Ingold,
-:Indianan- Executor, -:Postmaster for the delivery of the:
:Notice: Hill-Executores-Procurator- Jurisdiction, et
al.- :Render-Pinal- county-Bill-Remedy,
:Sephren-Q, -Pinal-county-Arizona-state-Trustee, :USPO RMN\
RE 322 398 361 US, appended: , 19 pages –**

**Re: Setting for the Presumption of the Hill-Executors' jurisdiction
Setting of the Procuration for the Hill-Executors over the Pinal-
county- Arizona-Trustee**

**Render: the Pinal- county-Arizona-state-Trustee- Dereliction
Bill of the Particulars for the remedy by the law of the PE-
2016-A.D.- covenant; See: Proof of-Claim: A) :2017-Ingold-
Pinal-county- RE 322 399 225 US- covenant -Bill-of-
Particulars, et seq. –**

Demand for the Payment-due-Now!

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Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

:Darrell-James: Hill, -:Ohioan,
-:beneficiary, -:Executor: PE-2016-A.D.
PO Box 3806.

Apache Junction, Arizona [85117];
and,

:Beverly-Jean: Romero- Hill, -:New- Mexican,
-:beneficiary, -:Executor: PE-2016-A.D.
PO Box 3806

Apache Junction, Arizona [85117], -:Hill-Executors-

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Rec Fee: \$30.00 Darrell Hill
Gila County, AZ, Sadie Jo Bingham, Recorder

Arizona-state
Pinal-county

RE: Pinal-county-Arizona -Trustees c/o the man-Jay-Roy: Ingold, -:Indianan -
Executor, -:postmaster for the delivery of the:
:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-
Remedy,
:Stephen-Q, -Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361
US, **appended: , 19- pages.**

Greetings, Stephen-Q, -:Pinal-county-Arizona-state-Trustee, et al.;

See: the Stephen-Q.-Pinal-notice of status, standing, right and the bill-due-now-paid for
the deprivation-damage-covenant-agreement in the Pinal-Ingold-2017-A.D.- covenant for the
Hill-Executors- beneficiary, -:procurators in the accordance with the Pinal-Ingold-2017-A.D.-
covenant by the law of the PE-2016-A.D. -Hill-Executors- covenant-procuration- agreement. -
:concerning:

Notice: No-presumptive or authorized -jurisdiction under the Pinal-county- Arizona-statute(s),
:Notice: Hill-Executor- Procuration- overstanding :Pinal-county-Arizona- Trustee-Offices, and,
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded.

**:Delivery of the document was made to the November 2021, -:Pinal-county v. :man-Jay-
Roy first meeting as the postman.**

For the document with the rebuttal of the Pinal-county-offer-presumptions is with the
delivery and receipt to the November 15th, 2021-A.D. -first-meeting to the Superior Court- Pinal-
county-Trustee v. man-Jay-Roy: Ingold, -:Indianan- Executor by the man-Jay-Roy: Ingold, -
Indianan- Executor- postal- delivery and notice in the accordance with the procuration, and
delivered to the man-Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322
398 361 US by the USPO- RMN RMN RE 322 398 361 US.

:Bill-rendered is with the Payment now-demanded.

:i- man verify that the above is true and correct to the best-ability, and will-state-same onto the
record in the open-court.

Cc: :Mark-Lamb, -:Sheriff- Trustee: USPO CMN 7009 1410 0000-7868 5802

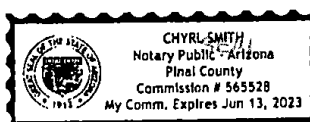
:Without-prejudice,

Darrell-James Hill -:Executor
:Darrell-James: Hill, -:Ohioan, -:beneficiary, -:Executor;
-:Executor- Procurator: Hill-Executors.

:Jurat

:Verified under the oath and autographed before me this **18th** day, :November- 2021- A.D.
:Type of Identification: Arizona-Driver-License

Cheryl Smith
:Notary-Public



USPS Tracking®

FAQs >

Track Another Package +

Tracking Number: RE322398344US

Remove X

Your item was picked up at the post office at 3:42 pm on November 19, 2021 in FLORENCE, AZ 85132.

✓ Delivered, Individual Picked Up at Post Office

November 19, 2021 at 3:42 pm
FLORENCE, AZ 85132

Get Updates ▾

Feedback

Text & Email Updates ▾

Tracking History ▴

November 19, 2021, 3:42 pm

Delivered, Individual Picked Up at Post Office

FLORENCE, AZ 85132

Your item was picked up at the post office at 3:42 pm on November 19, 2021 in FLORENCE, AZ 85132.

November 19, 2021, 8:13 am

Available for Pickup

FLORENCE, AZ 85132

November 19, 2021, 8:05 am

Arrived at Post Office

FLORENCE, AZ 85132

November 19, 2021, 1:17 am

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12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder



Departed USPS Facility
PHOENIX, AZ 85026

November 19, 2021, 1:16 am
Arrived at USPS Facility
PHOENIX, AZ 85026

November 18, 2021, 4:06 pm
Departed Post Office
APACHE JUNCTION, AZ 85120

November 18, 2021, 1:18 pm
USPS in possession of item
APACHE JUNCTION, AZ 85120

Product Information

See Less ^

Feedback

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

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Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



The UPS Store #3750
5301 S Superstition, itain Dr Ste
Gold Canyon, AZ 85118-1917
480-474-9838



APACHE JUNCTION
151 W SUPERSTITION BLVD
APACHE JUNCTION, AZ 85120-9998
(800)275-8777

Terminal.....: P0S3750A Date.: 11/18/2021
Employee.....: 118382 Time.: 12:51 PM

11/18/2021 01:20 PM

ITEM NAME	QTY	PRICE	TOTAL
Notary			\$10.00
Tax	1 @	\$10.00	\$0.00
8.5x11 Copies			\$0.22
Tax	2 @	\$0.11	\$0.01
Subtotal			\$10.22
Shipping/Other Charges			\$0.00
Total tax			\$0.01
Total			\$10.23
Cash			\$20.00
Change back (Cash)			(\$9.77)

Product	Qty	Unit Price	Price
First-Class Mail® Large Envelope	1		\$1.96
Florence, AZ 85132			
Weight: 0 lb 4.70 oz			
Estimated Delivery Date			
Mon 11/22/2021			
Registered Mail®			\$14.35
Amount: \$21.00			
Tracking #: RE322398344US			
Total			\$16.31
Grand Total:			\$16.31
Cash			\$20.00
Change			-\$3.69

USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.

Registered No. RE322398344US

Date Stamp
0130
19

Reg. Fee	\$1.96	Return Receipt
Handling Charge	\$14.35	Restricted Delivery
Postage	\$0.00	
Received by	\$0.00	
	\$16.31	

Customer Must Declare Full Value \$21.00 11/18/2021 Domestic Insurance up to \$25,000 is included upon the declared value. International indemnity is limited. (See Reverse).

OFFICIAL USE

To Be Completed By Customer (Please Print) All Entries Must Be in Ballpoint or Typed	FROM	APACHE JUNCTION, AZ 85120 Darrell James Hill, Chairman PO Box 3806 Apache Junction, Arizona 85117
	TO	Stephen G. Miller - Trustee % Natasha Kennedy - Trustee 135 N. Pinal Street, Admin Complex Florence, Arizona 85132

PS Form 3806, Receipt for Registered Mail Copy 1 - Customer
May 2007 (7530-02-000-9051)
For domestic delivery information, visit our website at www.usps.com

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12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type:
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery
☐ Insured Mail (over \$500)
Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

1. Article Addressed to:
Stephen G. Miller - Trustee
% Natasha Kennedy - Trustee
135 N. Pinal Street, Admin
Florence, Arizona 85132

2. Article Number (Transfer from service label)
9590 9402 4718 8344 9801 30
RE 322 398 344 US
PS Form 3811, July 2015 PSN 7530-02-000-9053

:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procurator- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

:Darrell-James: Hill, -:Ohioan,
:-beneficiary, -:Executor: PE-2016-A.D.²
PO Box 3806.

Apache Junction, Arizona [85117];
and,

:Beverly-Jean: Romero- Hill, -:New- Mexican,
:-beneficiary, -:Executor: PE-2016-A.D.³

PO Box 3806

Apache Junction, Arizona [85117], ~Hill-Executors~

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12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder



Arizona-state
Pinal-county

Re: **Setting of the Presumption of the Hill-Executors' jurisdiction⁴**
Setting of the Procurator of the Hill-Executors⁵ over the Pinal-county-
Arizona- Trustee⁶
Render :the -Pinal-county-Arizona-state-Trustee- Dereliction⁷- Bill of the
Particulars for the remedy⁸ by the law of the PE-2016-A.D.-
covenant⁹; -See :Proof-of-Claim: A) :2017-Ingold-Pinal-county- RE
322 399 225 US- covenant -Bill-of-Particulars, et seq. -

Demand for the Payment-due-Now!

Greetings :Jay, et al.- :man- Pinal-county-Arizona -Trustees

:Hill-Executors-

1~ :The -status of the Hill-Executors are of the spirit, soul, and flesh- :i- man¹⁰ creations with
the life: breathing, blood-flowing- habitators on the Arizona-state-country-land as the non-
political-aggregate- people of the united-States-of-America in the accordance with the

- 532
- 1 **:PE means:** political-election, express- covenant with the trustee in the nature of the Foreign-Sovereign-Immunity-Act -FSIA- of 1976-A.D.: Public Law 94-583, 90 Stat. 2891.
 - 2 **:Darrell-James: Hill, -:Ohioan-beneficiary, -:Executor means:** See: historical-documents: Superior constructive Notice and Demand: Permanent Non-Commerical Presumption, and: Constructive Notice : 'DARRELL JAMES HILL' of 'Darrell-James: of the family Hill', authorized Representative. -:Gila-county-Arizona-Doc.#: 2017-002378: pp. 1-24, 93-95.
 - 3 **:Beverly-Jean: Romero- Hill, -:New-Mexican-beneficiary, -:Executor -:PE-2016-A.D. means:** See: historical-documents: Superior constructive Notice and Demand: Permanent Non-Commerical Presumption, and: Constructive Notice : 'BEVERLY JEAN ROMERO- HILL' of 'Beverly-Jean; of the family Romero- Hill', authorized Representative. -:Gila-county-Arizona-Doc.#: 2017-002378: pp. 1-4, 26-44, 93-95.
 - 4 **:Setting of the Presumption of the Hill-Executors' jurisdiction means:** Ibid. 1, 2, 3.
 - 5 **:Procurator of the Hill-Executors means:** the- ministrative- overstanding of the Pinal-county-Arizona-state-Trustee- offices for the purpose of the assurance and ensurance of the absolute-advantage in the obtenance of the right of the remedy-now-past-due unto the benefit of the Hill-Executors- beneficiary.
 - 6 **:Setting of the Procurator of the Hill-Executors over the Pinal-county-Arizona- Trustee means:** 2, 3, 4 with the Pinal-county-Arizona-state-Trustee- deprivation of the DOI-1776-A.D.- rights.
 - 7 **:Pinal-county-Arizona-state-Trustee- Dereliction means:** gross-breach of the contract-obligations with the willful-harm upon the Hill-Executors- beneficiary.
 - 8 **:Render :the -Pinal-county-Arizona-state-Trustee- Dereliction- Bill of the Particulars for the remedy means:** See :the- Bill of the Particulars for the verified- Proof of the Claim. :Proof-of-Claim: A) :2017-Ingold-Pinal-county- RE 322 399 225 US- covenant -:Bill of Particulars of the Dishonored -remedy of the matter-now in the procurator unto the date of the verification of the resolve of these matters
 - 9 **:covenant means:** express-contract of the verified-chain of the command unto the agreement- in the fact.
 - 10 **:i- man means:** i~ refers to the Creator, -man~- refers to the species-created to be stewards over the Creator's- planet and affairs, as the appointed.

:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-Remedy

1 / 9

:Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361 US,

:Mark, -:Pinal-county-Arizona- state-Trustee, -:USPO RMN: RE 322 398 327 US.

:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procurator- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

Declaration-of-Independence -1776 -DOI-1776-A.D.¹¹- covenant by the law of the PE-2016-A.D- covenants overstanding the Pinal-county-Arizona-state-Trustee, et seq.-derelictions.

2~ :i- man- Darrell-James: Hill, -:Ohioan-beneficiary, -:Executor, and -wife-Beverly-Jean: Romero- Hill, -:New-Mexican-beneficiary, -:Executor, -:Hill-Executors~, are with the status of the living-soul -:united-States-of-America- countryman in the accordance with the PE-2016-A.D- DOI-1776-A.D.- covenants by the law of the PE-2016-A.D.-covenant, -:sovereign-status¹².

:Hill-Executors- EXPRESS- TRUST¹³

:Trustee- Non-Jurisdiction over the Hill-Executors

:Pinal-county-Arizona-state-Trustee -

:No- Presumption of the Pinal-county-Arizona-state-Trustee-Authority over the Hill-Executors

5~ For the presumption-set-forth in the October 2021-A.D.- notice is with no mention of the Trustee-Claim to have derived authority over the Hill-Executors.

The any-Presumption of the Pinal-county-Arizona-state-Trustee- any-adhesion-jurisdiction or authority over-standing of the Hill-Executors is without the merit and denied by the Hill-Executors.

:Limited-diplomatic-immunity of the Hill-Executors

6~ In the accordance with the DOI-1776-A.D.-covenant, et seq. is with the no-obligation for the Hill-Executors -acceptation of the Pinal-county-Arizona-state-Trustee-presumption of the jurisdiction over the Hill-Executors by the law of the PE-2016-A.D.-covenant- agreement.

For the limited-diplomatic-immunity of the Hill-Executors, :Ohioan and New-Mexican-man-kind is within the law of the DOI-1776-A.D.-covenant with the law by the PE-2016-A.D. overstanding the Pinal-county-Arizona-Trustee-oath with the fidelity-obligation.

:No- Claim of the Parens-Patriae -Doctrine over the Hill- Executors

7~ :No-unrevealed or unauthorized-presumption for the enforcement of the Parens-Patriae-Doctrine is permitted except by the express-written authorization by the Hill-Executors.

8~ For the no-further-error in the presumption of the authority or jurisdiction over the Hill-Executors is-now with this covenant-document- express-denial of the Pinal-county-Arizona-state-Trustee-Parens-Patriae-Doctrine with the Hill-Executors over-standing the Pinal-county-Trustee-Arizona-Trustee by the law of the PE-2016-A.D.-covenant-agreement.

:Hill- Executors- Jurisdiction-notice:

:no-authorization for the representation or procurator by the man- Jay-Roy: Ingold, et al.

9~ :the man-Jay-Roy: Ingold is with the no-authorization for the representation or procurator in the regard to or on the behalf of the Hill- Executors: man-Darrell-James: Hill-Ohioan- Executor or -wife -Beverly-Jean: Romero- Hill, -New-Mexican-Executor by the severance of that relationship on or about October- 2019- A.D.;

:no-authorization for the representation or procurator by the PINAL/ Pinal-county-Arizona-Trustee or JAY ROY INGOLD/ Jay-Roy: Ingold- man

10~ :neither the legal-entity- PINAL/ Pinal-county-Arizona-state-Trustee or legal-entity- JAY ROY INGOLD/ Jay-Roy: Ingold- Indianan-Executor is with the authorization or jurisdiction over the any-affairs of the Hill-Executors in the accordance with the DOI-1776-A.D.-covenant by the law of the PE-2016-A.D. -covenant, et al.- agreements; and,

:no-authorization for the representation or procurator

11 **:DOI-1776-A.D.- covenant means:** Law with the Almighty-God of the man:-covenant-governing-sovereigns, et al.- and: Darrell-James: Hill, -:Ohioan; and Beverly-Jean: Romero- Hill- New-Mexican

12 **:sovereign-status means:** Ohioan, :New- Mexican is with the DOI-1776-A.D. -state-countryman-status and non-U.S.-Corp.-citizen- status, as the sovereign-status. **:DOI-1776-A.D.- covenant means:** Law with the Almighty-God of the man:-covenant-governing- sovereigns, et al.- and: Darrell-James: Hill, -:Ohioan; and Beverly-Jean: Romero- Hill- New-Mexican

13 **:Hill-Executors- EXPRESS- TRUST means:** Ibid. 1, 2, 3.

:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procurator- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

11~ a) :this-lawful-notice gives :no-authorization for the representation or procuration over the any-affairs over the Hill-Executors to the man- Jay-Roy: Ingold -Indianan- beneficiary-Executor or to the Pinal-county-Arizona-state-Trustee; furthermore,

b) :this -notice must be made upon the JAY ROY INGOLD/ man- Jay-Roy: Ingold - Indianan-beneficiary -Executor and PINAL/Pinal-county-Arizona-state BY the PINAL/Pinal-county-Arizona-state-Trustee in the legal-manner.

:Hill- Executors- Procurators Over-stand the Pinal-county-Arizona-state-Trustee-offices

:Notice: Hill-Executors- Procurators Now-Time- Over-stand the Pinal-county-Arizona-state-Trustee- Dereliction

12~ :The -Hill- Executors are-now with the procuration and overstanding the Pinal-county-Arizona-state-Trustee in the result- of and accordance- with the 2017-Ingold-Pinal-county- RE 322 399 225 US- covenant¹⁴- Trustee- dereliction of the duty in the accordance with the 2017-Ingold-Pinal-county- RE 322 399 225 US- covenant by the law of the PE-2016-A.D.- Pinal-county- covenant- agreement. see :the- Fee-Schedule- obligation- clause for the remedy of the Pinal-county-Arizona-state-Trustee- derelictions, wrong-doings and Hill-Executors- damage by the law of the PE-2016-A.D.- covenant. **See: the- B) :the -Procuration-Obligation of the Equity-Covenant- RE 322 399 225 US , May 8th, 2017 A.D.; appended: pp. 9- 13 of 222 -et al., -Gila-county-Arizona- Doc.# 011722: Proof of the Claim; clause: Fee-Schedule for the remedy of the Pinal-county-Arizona-state-Trustee- damage upon the Hill-Executor-beneficiary with the law of the Equity-Covenant- RE 322 399 225 US by the law of the PE-2016-A.D.- covenant- agreement.**

:Notice: :appointment: Hill-Executor- Procurator: Darrell-James: Hill -:Ohioan, -:Executor overstanding the Pinal-county-Arizona-state-Trustee- dereliction for the Remedy

13~ :Darrell-James: Hill, -:Ohioan-beneficiary, -:Executor is with the acceptance of the appointment of the procurator-obligation by the Hill- Executors.

:Hill- Executors- Procurator-Obligation.

14~ For this procuration¹⁵-obligation is with the obtenance of the right to the remedy in the accordance with the law of the DOI-1776-A.D. by the law of the PE-2016-A.D.- covenant overstanding the Pinal-county-Arizona-state-Trustee-Derelictions for the obtenance of the Hill-Executors- beneficiary- remedy in the accordance with the law of the Covenant-RE 322 399 225 US , May 8th, 2017 A.D. as-verified in the Proof-of-Claim, -:RE 322 404 169 US -Covenant - October 29, 2019 A.D. ~ see: Gila-county-Arizona- Doc.# 011722~ as-relates to the man- Darrell-James: Hill, -:Ohioan -beneficiary, and -wife -Beverly-Jean: Romero- Hill, -:New- Mexican -beneficiary by the law of the PE-2016-A.D.- covenant.

:Procurator- Charge for the Pinal-county-Arizona-state-Trustee- derelict- remedy:

15~ :The -Trustee-derelict- goal of the remedy is with the obedience of the Pinal-county-Arizona-state-Trustee-office with the obtenance of the remedy unto the Hill-Executors-

14 :2017-Ingold-Pinal-county- RE 322 399 225 US- covenant means: See: **PROOF OF CLAIM B)** Procurator: Proof of Claim -RE 322 404 169 US - October 29, 2019 A.D. ~ see: Gila-county-Arizona- Doc.# 011722 Proof-of-Claim.

:Gila-county-Arizona- Doc.# 011722 means: Proof of Claim (USPO-RMN) RE 322 404 169 US - October 29, 2019 A.D. of the Equity-covenant-Agreement (USPO-RMN) RE 322 399 225 US – May 8 2017 A.D., with the activation at the June 8, 2017 A.D.- hearing with the DOI-1776-A.D.- covenant, et seq. by the law of the Equity-covenant-Agreement (USPO-RMN) RE 322 399 225 US and PE-2016-A.D.- covenant- agreements within the regard of the Hill-Executors- Procurators, -:man- Darrell-James: Hill and -wife- Beverly-Jean: Romero- Hill.

15 :Executor- **:Procuration- Claim means:** Procuration in the accordance with the PE-2016-A.D.- covenant: Covenant- #RE 322 399 225 US , May 8th, 2017 A.D.- Agreement where :in the fact of the matter of the Trustee-Dereliction with the harms upon the man- Darrell-James: Hill, -:Ohioan-beneficiary and Beverly-Jean: Romero- Hill, -:New-Mexican- beneficiary by the law of the **Gila-county Arizona- Doc.# 011722 means: Proof of Claim** (USPO-RMN) RE 322 404 169 US - October 29, 2019 A.D. of the Equity-covenant-Agreement (USPO-RMN) RE 322 399 225 US – May 8, 2017 A.D., with the activation at the June 8, 2017 A.D.- hearing with the DOI-1776-A.D.- covenant, et seq. by the law of the Equity-covenant-Agreement (USPO-RMN) RE 322 399 225 US and PE-2016-A.D.- covenant- agreements within the regard of the man- Darrell-James: Hill and -wife- Beverly-Jean: Romero- Hill.

:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-Remedy

:Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361 US,

:Mark, -:Pinal-county-Arizona- state-Trustee, -:USPO RMN: RE 322 398 327 US.

:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procurator- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

beneficiary in the accordance with the (USPO RMN#) RE 322 399 225 US- March 8, 2017 A.D. -
covenant- agreement and the law of the PE-2016-A.D.-covenant by the Hill-Executor-
Procurator. -

16- For this verified-document with the I) Setting of the Presumption of the Hill-Executors' jurisdiction, II) Setting of the Procurator of the Hill-Executors over the Pinal-county-Arizona-state-Trustee-Offices, and III) Render of the -Pinal-county-Arizona-state-Trustee- Dereliction- :Bill of the Particulars for the remedy with the law of the PE-2016-A.D. is with the PINAL/Pinal-county-Arizona-state-Trustee-Offices-express- expedient- ministration for the a) cease and desist all- Trustee-competition, deception, persecution and otherwise-dereliction in the every- Pinal-county-Arizona-state-Trustee- office, and b) assertive- Remedy of the Bill of Particulars in the accordance with the (USPO RMN#) RE 322 399 225 US- March 8, 2017 A.D. - covenant- agreement and the law of the PE-2016-A.D.-covenant by the Hill-Executor-
Procurator.

**:Pinal-county-Arizona-state-Trustee- man-oath-takers
for the gain of the Pinal-county-Arizona-state-Trustee- offices
See: Proof-of-Claim: C) :Notice of Hearing ... CV202000723: 2 pages.**

17- **See: Proof-of-Claim: C.** The-Pinal-county-Arizona-state-Trustee- derelictions in the direct-competition with the harms upon the Indianan-beneficiary- Jay-Roy: Ingold,-:Executor, et al. with the commercial-court- color-of-law- proceedings with the direct-contest against the Trustee-obligation are with the harm of the beneficiary-trust by the dishonor of the Pinal-county-Arizona-state-Trustee-office in the discordance with the (USPO RMN#) RE 322 399 225 US- March 8, 2017 A.D.- covenant-agreement and PE-2016-A.D.-covenant- agreement by the law of the (USPO RMN#) RE 322 399 225 US- March 8, 2017 A.D.- covenant-agreement and PE-2016-A.D.-covenant- agreement..

18- **See: Proof-of-Claim -B** and Gila-county-Arizona- Doc.# 011722¹⁶, -:Proof of the Claim with the deprivation-of-right- Fee-Schedule for the remedy of the damage as verified and demonstrated- herewith by the law of the Ingold-Pinal-county- RE 322 399 225 US, pp. 9- 13 of 222, et seq. -covenant in the relationship to a November- 2021 A.D. -commercial-matter - imposing :Notice-of-Hearing ... -:CV202000723 under the duress of the color-of-law without-of the Pinal-county-Trustee- jurisdiction or authorization from the beneficiary — See: Proof-of-Claim -C.

**:Pinal-county-Arizona- Trustee- has- Exceeded the Jurisdiction with the direct-
beneficiary- harms within a color-of-law- process against the beneficiary.
See: Proof-of-Claim -C. -:CV202000723 -:Notice of Hearing, et al.**

19- **See: Proof-of-Claim -C.** :The- PINAL -COUNTY/Pinal-county-Arizona-state-Trustee- commerical- competition with the beneficiary is with the unavoidable-propagation of the harms upon the beneficiary- Jay-Roy: Ingold, Indianan- beneficiary- Executor, et al.- and the Hill- Executors with the use of an abusive-commercial-process in the violation of the Ingold-Pinal-county- RE 322 399 225 US-covenant- agreement¹⁷ with the damage-intend upon the man-beneficiary, et al.- and upon the man- Hill-Executor- procurators-now overstanding the Pinal-county-Aizona-state-Trustee-offices with the law of the ngold-Pinal-county- RE 322 399 225 US- covenant- agreement by the law of the PE-2016-A.D. -covenant.

20- :On or about the October -2021-A.D. with-when the Notice-of-Hearing ... -:CV202000723 under the duress of the color-of-law by the beneficiary-subrogation: JAY ROY INGOLD- wrong-doing and harm-created upon the man- Jay-Roy: ingold- Indianan- beneficiary in the frank-breach of the Ingold-Pinal-county- RE 322 399 225 US-covenant- agreement¹⁸ is

16 **:Gila-county-Arizona- Doc.# 011722 means:** Proof of Claim (USPO-RMN) RE 322 404 169 US - October 29, 2019 A.D. of the Equity-covenant-Agreement (USPO-RMN) RE 322 399 225 US - May 8, 2017 A.D., with the activation at the June 8, 2017 A.D.- hearing with the DOI-1776-A.D.- covenant, et seq. by the law of the Equity-covenant-Agreement (USPO-RMN) RE 322 399 225 US and PE-2016-A.D. -covenant- agreements within the regard of the man- Darrell-James: Hill and -wife- Beverly-Jean: Romero- Hill.

17 **:Ingold-Pinal-county- RE 322 399 225 US-covenant- agreement means:** See: Proof-of-Claim -B

18 **:Ingold-Pinal-county- RE 322 399 225 US-covenant- agreement means:** See: Proof-of-Claim -B

:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-Remedy

:Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361 US,

:Mark, -:Pinal-county-Arizona- state-Trustee, -:USPO RMN: RE 322 398 327 US.

4 / 9

2021-016195 MISC Page: 536 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Fee: \$30.00 Darrell Hill, Recorder
Gila County, AZ, 86303
Beverly Jean Romero Hill

:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procuration- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

with-when the man- Jay-Roy: Ingold- Indianan-beneficiary with the beneficiary-subrogation: JAY ROY INGOLD- noticed to the Hill-Executors of the PE-2016-A.D- DOI-1776-A.D.- covenants with the procuration-authority-now for the remedy with the fidelity for the assurance and ensurance of the beneficiary-absolute- advantage in the accordance with the (USPO RMN#) RE 322 399 225 US- March 8, 2017 A.D.- covenant- agreement by the law of the PE-2016-A.D.- covenant.

:Conclusion -

21~ :For the lot of the damages-imposed upon the Hill-Executors is with the remedy-now due for the Pinal-county-Trustee-dereliction with the deprivation of the DOI-1776-A.D.-covenant, et seq.-property with the remedy-now-due upon this demand by the law of the PE-2016-A.D.- covenant-deprivation- agreement; and:

22~ This-Pinal-county-Arizona -matter-operating under the color-of-law is with the undermining of the DOI-1776-A.D. and with the posturing unto the harm upon the Hill-Executors by the Pinal-county-Arizona-state-Trustee with the use of the color of the law with the legal-machinery in the continued-violation of the DOI-1776-A.D. by the law of the PE-2016-A.D. :Evidence of the use of the color-of-law with the competition harm upon the beneficiary is with the violation of the express-covenant-Agreement (USPO-RMN) RE 322 399 225 US – May 8, 2017 A.D.; and:

23~ JAY ROY INGOLD/Jay-Roy: Ingold- Indianan-beneficiary is with the non-Trust-authority of the matters for the man- Hill-Executors by the Hill-Executors, and:

24~ The- Presumption of the Pinal-county-Arizona-state-Trustee- adhesion-jurisdiction or authority over-standing of the Hill-Executors is without the merit and denied by the Hill-Executors, and:

25~ For the limited-diplomatic-immunity with the Hill-Executors is within the limit of the law of the DOI-1776-A.D.-covenant by the law of the PE-2016-A.D.- covenant- agreement; and:

26~ No-unrevealed or unauthorized presumption for the enforcement of the Parens-Patriae-Doctrine is permitted except by the express-written authorization by the Hill-Executors.

**:Remedy-now-due- NOTICE with the Executor-Hills' procuration
with the law of the RE 322 399 225 US- March 8, 2017 A.D.-
covenant- Agreement by the he law of the PE-2016-A.D.**

27~ For the RE 322 399 225 US- March 8, 2017 A.D. -procuration-agreement-matter of the Pinal-county-Trustee-dereliction with the competition and damage upon the Hill-Executors is with the remedy by the procuration-now-time by the law of the PE-2016-A.D.- covenant between the Hill-Executors and the Pinal-county-Arizona- Trustees.

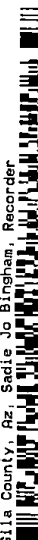
Cc: :Pinal-county-Arizona-state-Trustees
c/o :Jay-Roy: Ingold, -:Executor
5124 East 18th Avenue
Apache-Junction, Arizona

:Mark, -:Sheriff -:Lamb-
-:Pinal-county-Arizona-Trustee – :USPO RMN: RE 322 398 327 US
971 Jason Lopez Circle, Building C
Florence, Arizona [85132]

:Kevin: Cavanaugh- :District 1, -:Trustee,
:Mike: Goodman- :District 2, -:Vice-Chairman, -:Trustee,
:Stephen-Q: Miller- :District 3, -:Chairman, -:Trustee, – :USPO RMN RE 322 398 361 US
:Jeffrey: McClure- :District 4, -:Trustee,
:Jeff:Serdy- :District 5, -:Trustee;
:man, -:Board of the Pinal-county-Arizona- Trustees
-:Pinal-county-Arizona- Trustee -office

:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-Remedy
:Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361 US,
:Mark, -:Pinal-county-Arizona- state-Trustee, -:USPO RMN: RE 322 398 327 US.

2021-016195 MISC Page: 537 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Pc: 13030 Gita Co. Sadi Jo Bingham, Recorder



:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procurator- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

c/o :Natasha: Kennedy, -:Clerk, -:Trustee
135 N. Pinal Street, Administrative-Complex
Florence, Arizona [85132]

:James: Woods -:beneficiary-Executor,
:Lisa: Loeffler -:beneficiary-Executor,
:Tracy-Robert: Calhoun -:beneficiary-Executor;
:Damaged- countryman
c/o :Jay-Roy: Ingold -:beneficiary-Executor
5124 East 18th Avenue
Apache Junction, Arizona

:i- man verify that the above is true and correct to the best-ability, and will-state-same onto the record in the open-court.

:Without-prejudice,

Darrell-James Hill Executor

:Darrell-James: Hill,
-:Ohioan, -:beneficiary, -:Executor;
-:Executor- Procurator: Hill-Executors

Beverly-Jean Romero Hill Executor

:Beverly-Jean: Romero- Hill,
-:New-Mexican, -:beneficiary, -:Executor

:i- autographer below, know the man and witnessed their verification and autograph.

Witness: 11/15/21

Witness: 11/15/21

Witness: 11/15/21

By: Jay Roy Ingold

Wesley Gene Wheeler

:i- man verify that the above is true and correct to the best-ability, and will-state-same onto the record in the open-court.

:Without-prejudice,

Darrell-James Hill
-:Ohioan, -:beneficiary, -:Executor;
-:Executor- Procurator: Hill-Executors

Beverly-Jean: Romero- Hill,
-:New-Mexican, -:beneficiary, -:Executor

:Jurat -

:Verified under the oath and autographed before me this ____ day, :November- 2021- A.D.
:Type of Identification: Arizona-Driver-License

:Notary-Public

:SEAL

2021-016195 MISC Page: 538 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-Remedy
:Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361 US,
:Mark, -:Pinal-county-Arizona- state-Trustee, -:USPO RMN: RE 322 398 327 US.

:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procurator- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

c/o :Natasha: Kennedy, -:Clerk, -:Trustee
135 N. Pinal Street, Adminstrative-Complex
Florence, Arizona [85132]

:James: Woods -:beneficiary-Executor,
:Lisa: Loeffler -:beneficiary-Executor,
:Tracy-Robert: Calhoun -:beneficiary-Executor;
:Damaged- countryman
c/o :Jay-Roy: Ingold -:beneficiary-Executor
5124 East 18th Avenue
Apache Junction, Arizona

:i- man verify that the above is true and correct to the best-ability, and will-state-same onto the
record in the open-court.

:Without-prejudice,

Darrell-James Hill, Executor

:Darrell-James: Hill,

:-Ohioan, -:beneficiary, -:Executor;

:-Executor- Procurator: Hill-Executors

Beverly-Jean Romero Hill, Executor

:Beverly-Jean: Romero- Hill,

:-New-Mexican, -:beneficiary, -:Executor

:i- autographer below, know the man and witnessed their verification and autograph.

Witness: 11/15/21

Duncan Partington

Witness: 11/15/21

By: Jay Roy Ingold

Witness: 11/15/21

Wesley-Gene: Wheeler

:i- man verify that the above is true and correct to the best-ability, and will-state-same onto the
record in the open-court.

:Without-prejudice,

Darrell-James Hill, Executor

:Darrell-James: Hill,

:-Ohioan, -:beneficiary, -:Executor;

:-Executor- Procurator: Hill-Executors

Beverly-Jean Romero Hill, Executor

:Beverly-Jean: Romero- Hill,

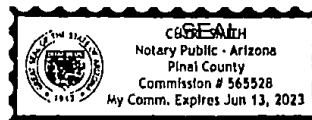
:-New-Mexican, -:beneficiary, -:Executor

:Jurat -

:Verified under the oath and autographed before me this 15th day, :November- 2021- A.D.

:Type of Identification: Arizona-Driver-License

Cheryl Smith
:Notary-Public



:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-Remedy
:Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361 US,
:Mark, -:Pinal-county-Arizona- state-Trustee, -:USPO RMN: RE 322 398 327 US.

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Reg Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procuration- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

:Proof-of-Claim: A)
:2017-Ingold-Pinal-county-
RE 322 399 225 US- covenant -
:Bill of Particulars of the Dishonored

-remedy of the matter-now
in the procuration unto the date
of the verification of
the resolve of these matters

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Gila County, Az, Sadie Jo Bingham, Recorder



:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-Remedy
:Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361 US,
:Mark, -:Pinal-county-Arizona- state-Trustee, -:USPO RMN: RE 322 398 327 US.

Bill of Particulars for the Immediate-Payment and Closure of the Matter

:Darrell-James: Hill, -:Ohiona -beneficiary- Executor;
:Procurator- Darrell-James: Hill¹: RE 322 399 225 US
PO Box 3806
Apache Junction, Arizona [85117]

:Mark, -Sheriff- :Lamb,
-:Pinal-county-Arizona- Trustee - :USPO RMN: RE 322 398 327 US
971 Jason Lopez Circle, Building C
Florence, Arizona [85132]

:Kevin: Cavanaugh- :District 1, -:Trustee,
:Mike: Goodman- :District 2, -:Vice-Chairman, -:Trustee,
:Stephen-Q: Miller- :District 3, -:Chairman, -:Trustee - :USPO RMN RE 322 398 361 US,
:Jeffrey: McClure- :District 4, -:Trustee,
:Jeff: Serdy- :District 5, -:Trustee;
:Board of supervisor
-:Pinal-county-Arizona- Trustee -office
c/o :Natasha: Kennedy, -:Clerk, -:Trustee
135 N. Pinal Street, Administrative-Complex
Florence, Arizona [85132]

:Bill- Payment-Agreement: Due-Now

:Day: **Deprivation-Covenant-Agreement*: June 8, 2017, 5:00 pm. for**
the Time distribution- obligation- period- date: April 5, 2017, 5:00 pm to the
November 14, 2021, 5:00 pm., -:Agreement: one- silver- dollar per
the minute (unit of time) until the resolve of the matter by the express-
covenant.

:Start-Day	:End-Day	:minues to- day	Deprivation-payment	Payment- total-date	Payment-minute- due-Now
04/05/17	11/14/21		one- silver- dollar -in-		
05:00 PM	05:00 PM	2423520*	specie per the minute	0	2423520
Totals:		2423520		0	2423520

*:Time-Calculation with the 'timeanddate.com/date/timeduration.html'²

:Immediate- Payment is Required and Demanded- now, -:post- haste.

:Please send payment to: :Darrell-James: Hill, -:Exector-
c/o :Darrell-James: Hill, -:Procurator: RE 322 399 225 US
PO Box 3806
Apache Junction, Arizona [85117]

2021-016195 MISC Page: 541 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

1 :Darrell-James: Hill, -:Ohioan -beneficiary- Executor; -:Procurator means: :Procurator for the
man- :Darrell-James: Hill, -:Ohioan- Executor in the Procurator of the non-resolved- RE 322 399 225 US-
March 8, 2017 A.D. -:covenant -deprivation-payment -agreement: one- silver- dollar per the minute (unit of
time) until the resolve of the matter.
2 :timeanddate.com/date/timeduration.html means: See: Calculation sheet attached, 1 page.

Bill of Particulars for the Immediate-Payment and Closure of the Matter

:Beverly-jean: Romero- Hill, -:New-Mexican -beneficiary- Executor;
:Procurator- Darrell-James: Hill¹: RE 322 399 225 US
PO Box 3806
Apache Junction, Arizona [85117]

:Mark, -Sheriff- :Lamb,
-:Pinal-county-Arizona- Trustee - :USPO RMN: RE 322 398 327 US
971 Jason Lopez Circle, Building C
Florence, Arizona [85132]

:Kevin: Cavanaugh- :District 1, -:Trustee,
:Mike: Goodman- :District 2, -:Vice-Chairman, -:Trustee,
:Stephen-Q: Miller- :District 3, -:Chairman, -:Trustee - :USPO RMN RE 322 398 361 US,
:Jeffrey: McClure- :District 4, -:Trustee,
:Jeff: Serdy- :District 5, -:Trustee;
:Board of supervisor
-:Pinal-county-Arizona- Trustee -office
c/o :Natasha: Kennedy, -:Clerk, -:Trustee
135 N. Pinal Street, Administrative-Complex
Florence, Arizona [85132]

:Bill- Payment-Agreement: Due-Now

:Day: **Deprivation-Covenant-Agreement*: June 8, 2017, 5:00 pm. for**
the Time distribution- obligation- period- date: April 5, 2017, 5:00 pm to the
November 14, 2021, 5:00 pm., -:Agreement: one- silver- dollar per
the minute (unit of time) until the resolve of the matter by the express-
covenant.

:Start-Day	:End-Day	:minues to- day	Deprivation-payment	Payment- total-date	Payment- minute-due- Now
04/05/17	11/14/21		one- silver- dollar -in-		
05:00 PM	05:00 PM	2423520*	specie per the minute	0	2423520
Totals:		2423520		0	2423520

*:Time-Calculation with the 'timeanddate.com/date/timeduration.html'²

:Immediate- Payment is Required and Demanded- now, -:post- haste.

:Please send payment to: :Beverly-Jean: Romero- Hill, -:Exector-
c/o :Darrell-James: Hill, -:Procurator: RE 322 399 225 US
PO Box 3806
Apache Junction, Arizona [85117]

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12/02/2021 10:19:01 AM Receipt #: 21-13425
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Gila County, Az, Sadie Jo Bingham, Recorder



1 :Darrell-James: Hill, -:Ohioan -beneficiary- Executor; -:Procurator means: :Procurator for the
man- :Beverly-Jean: Romero- Hill, -:New-Mexican- Executor in the Procurator of the non-resolved- RE 322
399 225 US- March 8, 2017 A.D. -:covenant -deprivation-payment -agreement: one- silver- dollar per the
minute (unit of time) until the resolve of the matter.

2 :timeanddate.com/date/timeduration.html means: See: Calculation sheet attached, 1 page.

Days Calculator: Days Between Two Dates

How many days, months, and years are there between two dates?

Count Days Add Days Workdays Add Workdays Weekday Week No

From: Wednesday, April 5, 2017 at 5:00:00 pm

To: Saturday, November 13, 2021 at 5:00:00 pm

Result: 1683 days, 0 hours, 0 minutes and 0 seconds

The duration is 1683 days, 0 hours, 0 minutes and 0 seconds

Or 4 years, 7 months, 8 days excluding the end date.

Or 55 months, 8 days excluding the end date.

Alternative time units

1683 days, 0 hours, 0 minutes and 0 seconds can be converted to one of these units:

- 145,411,200 seconds
- 2,423,520 minutes
- 40,392 hours
- 1683 days
- 240 weeks and 3 days
- 461.10% of a common year (365 days)

April 2017
26 days included

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May 2017
31 days included

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

June 2017–October 2021

June 2017–December 2017: 214 days included
 Year 2018: 365 days included
 Year 2019: 365 days included
 Year 2020: 366 days included
 January 2021–October 2021: 304 days included

November 2021
12 days included

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

☐ = First day included (Apr 5, 2017) ☐ = Last day included (Nov 12, 2021)

Make a New Calculation

- Make adjustment and calculate again
- New calculation between two other dates and times
- New calculation between two dates (no time)



Time & Date Calculator App
for iOS

See how long remains before a deadline or exactly when those 30 days are up.



:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procuration- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

Proof-of-Claim: B)
:the -Procuration-Obligation of the
Equity-Covenant- RE 322 399 225 US ,
May 8th, 2017 A.D.
; appended: pp. 9- 13 of 222 -et al.

2021-016195 MISC Page: 544 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-Remedy
:Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361 US,
:Mark, -:Pinal-county-Arizona- state-Trustee, -:USPO RMN: RE 322 398 327 US.

10/29/2019 11:47:58 AM Receipt #: 19-8874

Rec Fee: \$30.00 Darrell James Hill

Gila County, Az, Sadie Jo Bingham, Recorder

Jay- Roy: Ingold
 c/o 5142 East 18th Avenue
 Apache Junction, Arizona, ZIP CODE EXEMPT
 DMM 602.1.3.e2. Title 18 U.S.C. § 1342

Himanshu, acting as Director, Community Development
 Paula, acting as Code Compliance Manager
 c/o Terrilyn, acting as Code Compliance Officer
 575 North Idaho Street, Suite 800
 Apache Junction, Arizona 85119

RE 322 399 225 US

Re: 5124 East 18th Avenue, Apache Junction, Arizona

NOTICE	a)	EX POST FACTO LAW VIOLATION;
	b)	CRIMINAL COMPLAINT;
	c)	FEE SCHEDULE
DEMAND	i)	DISCHARGE COMPLAINT - CANCEL HEARING, and
	ii)	CEASE AND DESIST; or,
	iii)	COMMON LAW PROCEEDING

Himanshu, Paula, Terrilyn, Greetings:

i: man am writing: because i have received various requests for changes i voluntarily made upon my property in good faith. i made significant changes and sent you photos, etc. improving the general appearance of my property. However, you have violated your Oath of Office and duty to persist to impose upon me further DEMAND LETTER(s) and a COMPLAINT seeking further to impose Code Violations for my parcel "103-14-012B" that you knew or should have known was ACQUIRED in 2008!

Address Above: It is a felony for you to send mail to an address that is not a proper mailing address, or a fictitious mailing address. My proper mailing address is as indicated above; if you intend to send mail to another address then you intend to be guilty of mail fraud.

NOTICE:

Your actions are repugnant to the Constitution for the United States of America people, and the subsequent subordinate laws. You have mistakenly presumed that your code violations AND counts somehow applied to me; so, let me be clear:

a)	your application of code violations AND counts do Not apply to me;
b)	you have threatened to impose fines and/or create other hardship that Never before existed! if i do not comply with your demands;
c)	you have progressed to: a) threat of abuse, b) under the color of law; and,
d)	Your "CODE ENFORCEMENT OFFICER VERIFICATION", on the April 5,

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder

2017, COMPLAINT, is perjury if a) you knew or should have known that b) my parcel at 5124 E. 18th Ave. has been in my ownership since 2008; that c) the codes were contrived years later, even 2010; d) no man has made a claim; and, e) your verification is repugnant to the United States and Arizona constitutions Ex post facto law prohibitions.

Moreover, your use of code to DECEIVE ME evidences a perverse application with willful criminal intent.

DEMAND

- **Withdraw the Complaint and Cancel the Hearing post haste;**
- **CEASE and DESIST; No Further Trespass about my property.**
- **FEE SCHEDULE: If you choose Not to withdraw your complaint post haste, then from the time of your receipt of this NOTICE and DEMAND; I) you have 5 days to complete Items 1) & 2); thereafter, II) any further intrusion from your, et al., any actions to date, you a) agree to pay to me post haste upon request(s) one silver dollar per minute period of time from April 5, 2017, 5:00 pm., until this matter is resolved; and, b) you agree to pay post haste upon request any and all legal service charges incurred in resolve of- and collection from you- any amounts accrued.**
- **COMMON LAW PROCEEDING: If you choose to Not withdraw your complaint post haste, then i Demand a June 8, 2017, Court of Record to proceed in Common Law with trial by jury to hear and decide a) the controversy of your actions against me, and b) the Item 3) Fee Schedule, matter in controversy greater than twenty dollars at this writing.**
- **My Next Friend, the man steward-at-my-property, will accompany and assist me as i deem may be necessary.**

Jay-Roy: Ingold

	Jay-Roy: Ingold
	May 7, 2017

Because of these hassles I am putting my house up for sale.

I witness and acknowledge that all statements herein are true.

Lisa: Ingold
May 7, 2017

2021-016195 MISC Page: 546 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

2019-011722 MISC Page: 10 of 222
10/29/2019 11:47:58 AM Receipt #: 19-8874
Rec Fee: \$30.00 Darrell James Hill
Gila County, Az, Sadie Jo Bingham, Recorder

Registered No. RE322399

Date Stamp
0130
07

Reg. Fee	\$0.49	
Handling Charge	\$11.70	Return Receipt
Postage	\$2.75	Restricted Delivery
	\$0.00	
Received by	\$0.00	
		\$14.94

Customer Must Declare Full Value \$0.00 05/08/2013 Domestic Insurance up to \$25,000 is included. Declaration of Restricted Value. International Insurance is limited. (See Reverse).

APACHE JUNCTION, AZ 85120

OFFICIAL USE

To Be Completed By Customer (Please Print) All Entries Must Be In Ballpoint or Typed	FROM	Jay-Roy, Ingold, aggrieved man c/o 5142 East 18th Avenue Apache Junction, Arizona ZIP CODE EXEMPT without the US inc. 85120
	TO	Elizavinda, acting as Director, Cream Devel APACHE JUNCTION, AZ 85120 c/o Terrylyn, acting as Code Compl Offr 575 North Moho Street, Suite 800 Apache Junction, Arizona 85119

PS Form 3806, Receipt for Registered Mail May 2007 (7530-02-000-9051) Copy 1 - Customer (See Information on Reverse)
For domestic delivery information, visit our website at www.usps.com

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete Items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p>Elizavinda, acting as Director, Cream Devel Franks, acting as Code Compl Manager c/o Terrylyn, acting as Code Compl Offr 575 North Moho Street, Suite 800 Apache Junction, Arizona 85119</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail® <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation® <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>	
<p>2. Article Number (Transfer from service label)</p> <p>RE 322 399 225 45</p>			
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	

2021-016195 MISC Page: 547 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



2019-011722 MISC Page: 11 of 222

10/29/2019 11:47:58 AM Receipt #: 19-9874

Rec Fee: \$30.00 Darrell James Hill
Gila County, Az, Sadie Jo Bingham, Recorder



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Pinal County Civil Hearing Office
31 N. PINAL Street
Florence, Arizona



9590 9402 2795 7069 4407 33

2. Article Number (Transfer from service label)

70150640000158837648

PS Form 3811, July 2015 PSN 7530-02-000-8053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*☐ Agent☐ Addressee

B. Received by (Printed Name)

SPERINAGARCIA

C. Date of Delivery

5/21/17

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

P O Box 1326
Florence, AZ
85132

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Isaiah, acting as Director, Comm Devel
Pasha, acting as Code Compl Manager
of Territory, acting as Code Compl Off
575 North Kibbo Street, Suite 500
Apache Junction, Arizona 85119



9590 9402 2073 6132 0269 54

2. Article Number (Transfer from service label)

RE 322399225US

PS Form 3811, July 2015 PSN 7530-02-000-8053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

2019-011722 MISC Page: 12 of 222
10/29/2019 11:47:58 AM
Rec Fee: \$30.00
Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee \$3.35

Extra Services & Fees (check box, add fee as indicated)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.49

Total Postage and Fees \$6.59

0130 02

Postmark Here

05/09/2017

Sent To Mark, acting as Pinal County Sheriff
 Street and Apt. No., or P.O. Box 9711 Jason Circle, Building C
 City, State, ZIP+4® Florence, Arizona 85131

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee \$3.35

Extra Services & Fees (check box, add fee as indicated)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.49

Total Postage and Fees \$6.59

0130 02

Postmark Here

05/09/2017

Sent To Mark, acting as Pinal County Sheriff
 Street and Apt. No., or P.O. Box 9711 Jason Circle, Building C
 City, State, ZIP+4® Florence, Arizona 85131

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

2019-011722 MISC Page: 13 of 222
 10/29/2019 11:47:58 AM Receipt #: 19-8874
 Rec Fee: \$30.00 Darrell Hill
 Gila County, Az, Sadie Jo Bingham, Recorder

:Notice: No-presumptive or authorized -jurisdiction under the Pinal-county-Arizona- statute
:Notice: Hill-Executor- Procurator- overstanding :Pinal-county-Arizona- Trustee- Offices
:Notice: Bill of Particulars to the Pinal-county-Trustee- Dereliction: -Payment is demanded

1.

Proof-of-Claim: C)

:Notice of Hearing ... CV202000723; 2 pages;
PINAL/Pinal-county-Arizona-state-Trustee against
Jay-Roy: Ingold- Indianan-beneficiary

2021-016195 MISC Page: 550 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



:Notice: Hill- Executors- Procurator- Jurisdiction, et al.- :Render- Pinal-county-Bill-Remedy
:Stephen-Q, -:Pinal-county-Arizona-state-Trustee, -:USPO RMN RE 322 398 361 US,
:Mark, -:Pinal-county-Arizona- state-Trustee, -:USPO RMN: RE 322 398 327 US.

9 / 9

1 **KENT VOLKMER**
2 **PINAL COUNTY ATTORNEY**
3 Craig Cameron (013176)
4 Deputy County Attorney
5 Post Office Box 887
6 Florence, AZ 85132
7 Telephone (520) 866-6466
8 Fax: (520) 866-6521
9 E-mail: craig.cameron@pinal.gov
10 *Attorney for Plaintiff*

2021-016195 MISC Page: 551 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF PINAL**

9 **PINAL COUNTY**, a political subdivision of
10 the State of Arizona

11 Plaintiff,

12 vs.

13 **JAY ROY INGOLD**,

14 Defendant.

Case No. CV202000723

**NOTICE OF HEARING FOR ENTRY
OF DEFAULT JUDGMENT AND
ISSUANCE OF PERMANENT
MANDATORY INJUNCTION**

Hon. JOSEPH R. GEORGINI

15 PLEASE TAKE NOTICE the Plaintiff PINAL COUNTY's Motion for Entry of
16 Default Judgment and Issuance of Permanent Mandatory Injunction will come on for hearing
17 before the Honorable JOSEPH R. GEORGINI, of the Superior Court of the State of Arizona, in
18 and for Pinal County, located at **PINAL COUNTY COURTHOUSE, 971 N. JASON LOPEZ**
19 **CIR; BLDG A, FLORENCE, ARIZONA, on the 15TH day of NOVEMBER, 2021 at 10:00**
20 **am** or as soon thereafter as counsel may be heard, and Plaintiff will request the entry of
21 judgment by default for the relief prayed for in the Verified Complaint to Enjoin Violations of
22 the Pinal County Development Services Code and issuance of a Permanent Mandatory
23 Injunction.
24

550

1
2 **RESPECTFULLY SUBMITTED** this 8th day of October, 2021.

3 KENT VOLKMER
4 PINAL COUNTY ATTORNEY

5
6 /s/ Craig Cameron
7 Craig Cameron
8 Deputy County Attorney

9 **ORIGINAL** of the foregoing e-filed
10 this 8th day of October, 2021 with:

11 CLERK OF THE SUPERIOR COURT
12 PINAL COUNTY COURTHOUSE
13 971 N. JASON LOPEZ CIR; BLDG A
14 FLORENCE, AZ 85132

15 **COPIES** of the foregoing delivered/
16 personal service/mailed this
17 8th day of October, 2021 to:

18 JOSEPH R. GEORGINI
19 JUDGE OF THE SUPERIOR COURT

20 JAY ROY INGOLD
21 5124 E. 18TH AVE
22 APACHE JUNCTION, AZ 85119

23 By: /s/ Kelly Pile
24 CC/kp



RE322398327US

APACHE JUNCTION
151 PERSTITION BLVD
APACHE J ION, AZ 85120-9998
(602)275-8777

11/15/2021 12:19 PM

Product	Qty	Unit Price	Price
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First-Class Mail®	1		\$1.96
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Large Envelope			
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Florence, AZ 85132			
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Weight: 0 lb 4.20 oz			
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Estimated Delivery Date			
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Thu 11/18/2021			
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Registered Mail®			\$14.35
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Amount: \$21.00			
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Tracking #:			
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RE322398327US			
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Total			\$16.31
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First-Class Mail®	1		\$1.96
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Large Envelope			
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Florence, AZ 85132			
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Weight: 0 lb 4.10 oz			
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Estimated Delivery Date			
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Thu 11/18/2021			
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Registered Mail®			\$14.35
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Amount: \$21.00			
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Tracking #:			
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RE322398361US			
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Total			\$16.31
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Grand Total:			\$32.62
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Cash			\$40.00
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Change			-\$7.38
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2021-016195 MISC Page: 553 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder

USPS Tracking®

[FAQs >](#)[Track Another Package +](#)**Tracking Number:** RE322398327US[Remove X](#)

Your item was delivered at 11:55 am on November 16, 2021 in FLORENCE, AZ 85132.

✓ Delivered

November 16, 2021 at 11:55 am
FLORENCE, AZ 85132

[Get Updates ▾](#)[Feedback](#)[Text & Email Updates ▾](#)[Tracking History ▴](#)**November 16, 2021, 11:55 am**

Delivered

FLORENCE, AZ 85132

Your item was delivered at 11:55 am on November 16, 2021 in FLORENCE, AZ 85132.

November 16, 2021, 11:20 am

Refused

FLORENCE, AZ 85132

November 16, 2021, 8:16 am

Available for Pickup

FLORENCE, AZ 85132

November 16, 2021, 8:11 am

Arrived at Post Office

2021-016195 MISC Page: 554 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder



FLORENCE, AZ 85132

November 15, 2021, 10:27 pm

Departed USPS Facility

PHOENIX, AZ 85026

November 15, 2021, 10:26 pm

Arrived at USPS Facility

PHOENIX, AZ 85026

November 15, 2021, 5:07 pm

Departed Post Office

APACHE JUNCTION, AZ 85120

November 15, 2021, 12:15 pm

USPS in possession of item

APACHE JUNCTION, AZ 85120

Feedback

Product Information

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

2021-016195 MISC Page: 555 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



negl
To Be Completed By Customer
(Please Print)
All Entries Must Be In Ballpoint or Typed
PS Form 3806, May 2007 (7530-02-000-9051)

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee ☐
B. Received by (Printed Name) 1000 SAGEA C. Date of Delivery 11-16-21
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

1. Article Addressed to:
Stephen Q. Miller - Trustee
46 N. Pinal Street - Clerk
135 N. Pinal Street - Admin
Florence, Arizona 85132

2. Article Number (Transfer from service label)
RE 322 398 361 US

3. Service Type
☐ Priority Mail Express®
☐ Registered Mail®
☐ Registered Mail® Signature Confirmation™
☐ Registered Mail® Restricted Delivery
☐ Certified Mail®
☐ Certified Mail® Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail™
☐ Insured Mail™ Signature Confirmation™
☐ Restricted Delivery

Domestic Return Receipt
PS Form 3811, July 2015 PSN 7530-02-000-9053

APACHE JUNCTION
151 PERSTITION BLVD
APACHE JUNCTION, AZ 85120-9998
(800) 275-8777

11/15/2021 12:19 PM

Product	Qty	Unit Price	Price
First-Class Mail®	1		\$1.96
Large Envelope			
Florence, AZ 85132			
Weight: 0 lb 4.20 oz			
Estimated Delivery Date			
Thu 11/18/2021			
Registered Mail®			\$14.35
Amount: \$21.00			
Tracking #: RE322398327US			
Total			\$16.31
First-Class Mail®	1		\$1.96
Large Envelope			
Florence, AZ 85132			
Weight: 0 lb 4.10 oz			
Estimated Delivery Date			
Thu 11/18/2021			
Registered Mail®			\$14.35
Amount: \$21.00			
Tracking #: RE322398361US			
Total			\$16.31
Grand Total:			\$32.62
Cash			\$40.00
Change			-\$7.38

Registered No. RE322398361US

Reg. Fee	\$1.96
Handling Charge	\$14.35
Postage	\$0.00
Received by	\$0.00
Customer Must Declare Full Value	\$21.00

Domestic Insurance \$15.00
11/15/2021
Indemnity is limited. (See Reverse).

OFFICIAL USE

APACHE JUNCTION, AZ 85120
Darrell James Hill, Executor
Beverly Jean Romero Hill, Executor
P.O. Box 3806
Apache Junction, Arizona 8517
Stephen Q. Miller, Charman Trustee
46 N. Pinal Street, Clerk Trustee
135 N. Pinal Street, Admin Complex
Florence, Arizona 85132

PS Form 3806, Receipt for Registered Mail Copy 1 - Customer
May 2007 (7530-02-000-9051) (See Information on Reverse)
For domestic delivery information, visit our website at www.usps.com

The UPS Store #3750
5301 S Superstition Mountain Dr Ste
Gold Canyon, AZ 85118-1917
480-474-9838

Terminal: POS3750A Date: 11/15/2021
Employee: 179634 Time: 11:42 AM

ITEM NAME	QTY	PRICE	TOTAL
Notary			\$10.00
Tax	1	\$10.00	\$0.00
Subtotal			\$10.00
Shipping/Other Charges			\$0.00
Total tax			\$0.00
Total			\$10.00
Cash			\$50.00
Change back (Cash)			(\$40.00)

Items Designated NR are NOT eligible for Returns, Refunds or Exchanges.

US Postal Rates Are Subject to Surcharge.

View The UPS Store, Inc.'s privacy notice at <https://www.theupsstore.com/privacy-policy>

USPS Tracking®[FAQs >](#)**Track Another Package +****Tracking Number:** RE322398361US[Remove X](#)

Your item was picked up at the post office at 3:27 pm on November 16, 2021 in FLORENCE, AZ 85132.

✓ Delivered, Individual Picked Up at Post Office

November 16, 2021 at 3:27 pm
FLORENCE, AZ 85132

Get Updates ✓

Feedback

Text & Email Updates**Tracking History****November 16, 2021, 3:27 pm**

Delivered, Individual Picked Up at Post Office
FLORENCE, AZ 85132

Your item was picked up at the post office at 3:27 pm on November 16, 2021 in FLORENCE, AZ 85132.

November 16, 2021, 8:16 am

Available for Pickup
FLORENCE, AZ 85132

November 16, 2021, 8:11 am

Arrived at Post Office
FLORENCE, AZ 85132

November 15, 2021, 10:27 pm

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:Concession of 1213:

John, by the grace of God, king of England, lord or Ireland, duke of Normandy and Aquitaine, count of Anjou, to all the faithful of Christ who shall look upon this pre, sent charter, greeting.

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Back to Medieval Source Book

Medieval Sourcebook: John I: Concession Of England To The Pope. 1213

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, count of Anjou, to all the faithful of Christ who shall look upon this pre. sent charter, greeting.

We wish it to be known to all of you, through this our charter, furnished with our seal, that inasmuch as we had offended in many ways God and our mother the holy church, and in consequence are known to have very much needed the divine mercy, and can not offer anything worthy for making due satisfaction to God and to the church unless we humiliate ourselves and our kingdoms:—we, wishing to humiliate ourselves for Him who humiliated Himself for us unto death, the grace of the Holy Spirit inspiring, not induced by force or compelled by fear, but of our own good and spontaneous will and by the common counsel of our barons, do offer and freely concede to God and His holy apostles Peter and Paul and to our mother the holy Roman church, and to our lord pope Innocent and to his Catholic successors, the whole kingdom of England and the whole kingdom Ireland, with all their rights and appurtenances, for the remission of our own sins and of those of our whole race as well for the living as for the dead; and now receiving and holding them, as it were a vassal, from God and the Roman church, in the presence of that prudent man Pandulph, subdeacon and of the household of the lord pope, we perform and swear fealty for them to him our aforesaid lord pope Innocent, and his Catholic successors and the Roman church, according to the form appended; and in the presence of the lord pope, if we shall be able to come before him, we shall do liege homage to him; binding our successors and our heirs by our wife forever, in similar manner to perform fealty and show homage to him who shall be chief pontiff at that time, and to the Roman church without demur. As a sign, moreover, of this our on we will and establish perpetual obligation and concession we will establish that from the proper and especial revenues of our aforesaid kingdoms, for all the service and customs which we ought to render for them, saving in all things the penny of St. Peter, the Roman church shall receive yearly a thousand marks sterling, namely at the feast of St. Michael five hundred marks, and at Easter five hundred marks—seven hundred, namely, for the kingdom of England, and three hundred for the kingdom of Ireland—saving to us and to our heirs our rights, liberties and regalia; all of which things, as they have been described above, we wish to have perpetually valid and firm; and we bind ourselves and our successors not to act counter to them. And if we or any one of our successors shall presume to attempt this, whoever he be, unless being duly warned he come to his kingdom, and this senses, he shall lose his right to the kingdom, and this charter of our obligation and concession shall always remain firm.

Form of the oath of fealty

I, John, by the grace of God, king of England and lord of Ireland, from this hour forth will be faithful to God and St. Peter and the Roman church and my lord pope Innocent and his Successors who are



ordained in a Catholic manner: I shall not bring it about by deed, word, consent or counsel, that they lose life or members or be taken captive, I will impede their being harmed if I know of it, and will cause harm to be removed from them if I shall be able: otherwise as quickly as I can I will intimate it or tell of it to such persons as I believe for certain will inform them. Any counsel which they entrust to me through themselves or through their envoys or through their letters, I will keep secret, nor will I knowingly disclose it to anyone to their harm. I will aid to the best of my ability in holding and defending against all men the patrimony of St. Peter, and especially the kingdom of England and the kingdom of Ireland. So may God and these holy Gospels aid me.

I myself bearing witness in the house of the Knights Templars near Dover, in the presence of master H., archbishop of Dublin; master J., bishop of Norwich; G., the son of Peter count of Essex, our justice; W., count of Salisbury, our brother; W. Marshall, count of Pembroke; R., count of Boulogne; W., count of Warren; S., count of Winchester; W., count of Arundel; W., count of Ferrieres; W, Briwer; Peter, son of Herbert; Warin, son of Gerold; on the 15th day of May, in the 14th year of our reign.

from. Stubbs's *Charters*, p. 284, translated in Ernest F. Henderson, , *Select Historical Documents of the Middle Ages*, (London: George Bell, 1910), pp. 430-431

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Proof-of-Claim – F. 1 /1

:New-Mexico-state-Constitution

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New-Mexico-state-Constitution

Preamble

We the people of New Mexico, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do ordain and establish this constitution.

Article II Bill of Rights

Sec. 1. Supreme law of the land.

Sec. 1. Supreme law of the land.

The state of New Mexico is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land.

Sec. 2. Popular sovereignty.

Sec. 2. Popular sovereignty.

All political power is vested in and derived from the people: all government of right originates with the people, is founded upon their will and is instituted solely for their good.

Sec. 3. Right of self-government.

Sec. 3. Right of self-government.

The people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state.

Sec. 4. Inherent rights.

Sec. 4. Inherent rights.

All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness.

Sec. 5. Rights under Treaty of Guadalupe Hidalgo preserved.

Sec. 5. Rights under Treaty of Guadalupe Hidalgo preserved.

The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate.

Sec. 6. Right to bear arms.

Sec. 6. Right to bear arms.

No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and

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	recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. (As amended November 2, 1971 and November 2, 1986.
Sec. 7. Habeas corpus.	<p>Sec. 7. Habeas corpus.</p> <p>The privilege of the writ of habeas corpus shall never be suspended, unless, in case of rebellion or invasion, the public safety requires it.</p>
Sec. 8. Freedom of elections.	<p>Sec. 8. Freedom of elections.</p> <p>All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.</p>
Sec. 9. Military power subordinate; quartering of soldiers.	<p>Sec. 9. Military power subordinate; quartering of soldiers.</p> <p>The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.</p>
Sec. 10. Searches and seizures.	<p>Sec. 10. Searches and seizures.</p> <p>The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation.</p>
Sec. 11. Freedom of religion.	<p>Sec. 11. Freedom of religion.</p> <p>Every man shall be free to worship God according to the dictates of his own conscience, and no person shall ever be molested or denied any civil or political right or privilege on account of his religious opinion or mode of religious worship. No person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship.</p>



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Sec. 12. Trial by jury; less than unanimous verdicts in civil cases.

Sec. 12. Trial by jury; less than unanimous verdicts in civil cases.

The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate. In all cases triable in courts inferior to the district court the jury may consist of six. The legislature may provide that verdicts in civil cases may be rendered by less than a unanimous vote of the jury.

Sec. 13. Bail; excessive fines; cruel and unusual punishment.

Sec. 13. Bail; excessive fines; cruel and unusual punishment.

All persons shall, before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great and in situations in which bail is specifically prohibited by this section. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. Bail may be denied by the district court for a period of sixty days after the incarceration of the defendant by an order entered within seven days after the incarceration, in the following instances:

A. the defendant is accused of a felony and has previously been convicted of two or more felonies, within the state, which felonies did not arise from the same transaction or a common transaction with the case at bar;

B. the defendant is accused of a felony involving the use of a deadly weapon and has a prior felony conviction, within the state. The period for incarceration without bail may be extended by any period of time by which trial is delayed by a motion for a continuance made by or on behalf of the defendant. An appeal from an order denying bail shall be given preference over all other matters. (As amended November 4, 1980 and November 8, 1988.)

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Sec. 14. Indictment and information; grand juries; rights of accused.

Sec. 14. Indictment and information; grand juries; rights of accused.

No person shall be held to answer for a capital, felonious or infamous crime unless on a presentment or indictment of a grand jury or information filed by a district attorney or attorney general or their deputies, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be so held on information without



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having had a preliminary examination before an examining magistrate, or having waived such preliminary examination. A grand jury shall be composed of such number, not less than twelve, as may be prescribed by law. Citizens only, residing in the county for which a grand jury may be convened and qualified as prescribed by law, may serve on a grand jury. Concurrence necessary for the finding of an indictment by a grand jury shall be prescribed by law; provided, such concurrence shall never be by less than a majority of those who compose a grand jury, and, provided, at least eight must concur in finding an indictment when a grand jury is composed of twelve in number. Until otherwise prescribed by law a grand jury shall be composed of twelve in number of which eight must concur in finding an indictment. A grand jury shall be convened upon order of a judge of a court empowered to try and determine cases of capital, felonious or infamous crimes at such times as to him shall be deemed necessary, or a grand jury shall be ordered to convene by such judge upon the filing of a petition therefor signed by not less than the greater of two hundred registered voters or two percent of the registered voters of the county, or a grand jury may be convened in any additional manner as may be prescribed by law. In all criminal prosecutions, the accused shall have the right to appear and defend himself in person, and by counsel; to demand the nature and cause of the accusation; to be confronted with the witnesses against him; to have the charge and testimony interpreted to him in a language that he understands; to have compulsory process to compel the attendance of necessary witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. (As amended November 4, 1924, effective January 1, 1925, November 4, 1980, and November 8, 1994.)

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Sec. 15. Self-incrimination; double jeopardy.

Sec. 15. Self-incrimination; double jeopardy.

No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense; and when the indictment,



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information or affidavit upon which any person is convicted charges different offenses or different degrees of the same offense and a new trial is granted the accused, he may not again be tried for an offense or degree of the offense greater than the one of which he was convicted.

Sec. 16. Treason. Sec. 16. Treason.

Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Sec. 17. Freedom of speech and press; libel. Sec. 17. Freedom of speech and press; libel.

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted.

Sec. 18. Due process; equal protection; sex discrimination. Sec. 18. Due process; equal protection; sex discrimination

No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person. (As amended November 7, 1972, effective July 1, 1973).

Sec. 19. Retroactive laws; bills of attainder; impairment of contracts. Sec. 19. Retroactive laws; bills of attainder; impairment of contracts.

No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature.

Sec. 20. Eminent domain. Sec. 20. Eminent domain. Private property shall not be taken or damaged for public



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Sec. 21.
Imprisonment for
debt.

use without just compensation.

Sec. 21. Imprisonment for debt.

No person shall be imprisoned for debt in any civil action.

Section 22 – Alien Landownership
Repealed.

Sec. 23.
Reserved rights.

Sec. 23. Reserved rights.

The enumeration in this constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people.

Sec. 24. Victim's
rights.

Sec. 24. Victim's rights.

A. A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child or that victim's representative shall have the following rights as provided by law:

- (1) the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- (2) the right to timely disposition of the case;
- (3) the right to be reasonably protected from the accused throughout the criminal justice process;
- (4) the right to notification of court proceedings;
- (5) the right to attend all public court proceedings the accused has the right to attend;
- (6) the right to confer with the prosecution;
- (7) the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
- (8) the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;
- (9) the right to information about the conviction, sentencing, imprisonment, escape or release of the accused;
- (10) the right to have the prosecuting attorney notify the

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victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause; and

(11) the right to promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property.

B. A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of Subsection A of Section 24 of Article 2 of the constitution of New Mexico.

C. The provisions of this amendment shall not take effect until the legislature enacts laws to implement this amendment. (As added November 3, 1992.)

Article XX –
Miscellaneous
Section 1 – Oath
of Officer

Article XX – Miscellaneous
Section 1 – Oath of Officer

Every person elected or appointed to any office shall, before entering upon his duties, take and subscribe to an oath or affirmation that he will support the constitution of the United States and the constitution and laws of this state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.



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Preamble

We the people of the State of Arizona, grateful to Almighty God for our liberties, do ordain this Constitution.

Article 2 DECLARATION OF RIGHTS

1. Fundamental principles; recurrence to

Section 1. Fundamental principles; recurrence to

1. A frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

2. Political power; purpose of government

Section 2. Political power; purpose of government

Section 2. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

2.1. Victims' bill of rights

Section 2.1. Victims' bill of rights

Section 2.1. (A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:

1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.

2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.

3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.

4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.

5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other

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person acting on behalf of the defendant.

6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.

7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.

8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.

9. To be heard at any proceeding when any post-conviction release from confinement is being considered.

10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.

12. To be informed of victims' constitutional rights.

(B) A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

(D) The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.



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(E) The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims.

3. Supreme law of the land; authority to exercise sovereign authority against federal action; use of government personnel and financial resources

Section 3. Supreme law of the land; authority to exercise sovereign authority against federal action; use of government personnel and financial resources

Section 3. A. The Constitution of the United States is the supreme law of the land to which all government, state and federal, is subject.

B. To protect the people's freedom and to preserve the checks and balances of the United States Constitution, this state may exercise its sovereign authority to restrict the actions of its personnel and the use of its financial resources to purposes that are consistent with the constitution by doing any of the following:

1. Passing an initiative or referendum pursuant to article IV, part 1, section 1.
2. Passing a bill pursuant to article IV, part 2 and article V, section 7.
3. Pursuing any other available legal remedy.

C. If the people or their representatives exercise their authority pursuant to this section, this state and all political subdivisions of this state are prohibited from using any personnel or financial resources to enforce, administer or cooperate with the designated federal action or program.

4. Due process of law

Section 4. Due process of law

Section 4. No person shall be deprived of life, liberty, or property without due process of law.

5. Right of petition and of assembly

Section 5. Right of petition and of assembly

Section 5. The right of petition, and of the people peaceably to assemble for the common good, shall never be abridged.



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6. Freedom of speech and press

6. Freedom of speech and press

Section 6. Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

7. Oaths and affirmations

Section 7. Oaths and affirmations

Section 7. The mode of administering an oath, or affirmation, shall be such as shall be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

8. Right to privacy

Section 8. Right to privacy

Section 8. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

9. Irrevocable grants of privileges, franchises or immunities

Section 9. Irrevocable grants of privileges, franchises or immunities

Section 9. No law granting irrevocably any privilege, franchise, or immunity shall be enacted.

10. Self-incrimination; double jeopardy

Section 10. Self-incrimination; double jeopardy

Section 10. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

11. Superior court; presiding judges; duties

Section 11. Superior court; presiding judges; duties

11. There shall be in each county a presiding judge of the superior court. In each county in which there are two or more judges, the supreme court shall appoint one of such judges presiding judge. Presiding judges shall exercise administrative supervision over the superior court and judges thereof in their counties, and shall have such other

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duties as may be provided by law or by rules of the supreme court.

12. Liberty of conscience; appropriations for religious purposes prohibited; religious freedom

Section 12. Liberty of conscience; appropriations for religious purposes prohibited; religious freedom

12. The liberty of conscience secured by the provisions of this constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned touching his religious belief in any court of justice to affect the weight of his testimony.

13. Equal privileges and immunities

Section 13. Equal privileges and immunities

13. No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

14. Superior court; original jurisdiction

Section 14. Superior court; original jurisdiction

14. The superior court shall have original jurisdiction of:

1. Cases and proceedings in which exclusive jurisdiction is not vested by law in another court.
2. Cases of equity and at law which involve the title to or possession of real property, or the legality of any tax, impost, assessment, toll or municipal ordinance.
3. Other cases in which the demand or value of property in controversy amounts to one thousand dollars or more, exclusive of interest and costs.

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4. Criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for by law.
5. Actions of forcible entry and detainer.
6. Proceedings in insolvency.
7. Actions to prevent or abate nuisance.
8. Matters of probate.
9. Divorce and for annulment of marriage.
10. Naturalization and the issuance of papers therefor.
11. Special cases and proceedings not otherwise provided for, and such other jurisdiction as may be provided by law.

15. Excessive bail; cruel and unusual punishment

Section 15. Excessive bail; cruel and unusual punishment

15. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

16. Corruption of blood; forfeiture of estate

Section 16. Corruption of blood; forfeiture of estate

No conviction shall work corruption of blood, or forfeiture of estate.

17. Eminent domain; just compensation for private property taken; public use as judicial question

Section 17. Eminent domain; just compensation for private property taken; public use as judicial question

17. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, paid into court for the owner, secured by bond as may be fixed by the court, or paid into the state treasury for the owner on such terms and conditions as the legislature may provide, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into

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court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

18. Imprisonment for debt

Section 18. Imprisonment for debt

18. There shall be no imprisonment for debt, except in cases of fraud.

19. Bribery or illegal rebating; witnesses; self-incrimination no defense

Section 19. Bribery or illegal rebating; witnesses; self-incrimination no defense

19. Any person having knowledge or possession of facts that tend to establish the guilt of any other person or corporation charged with bribery or illegal rebating, shall not be excused from giving testimony or producing evidence, when legally called upon to do so, on the ground that it may tend to incriminate him under the laws of the state; but no person shall be prosecuted or subject to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he may so testify or produce evidence.

20. Military power subordinate to civil power

Section 20. Military power subordinate to civil power

20. The military shall be in strict subordination to the civil power.

21. Free and equal elections

Section 21. Free and equal elections

21. All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

22. Bailable

Section 22. Bailable offenses

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offenses

22. A. All persons charged with crime shall be bailable by sufficient sureties, except:

1. For capital offenses, sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age when the proof is evident or the presumption great.
2. For felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge.
3. For felony offenses if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community and if the proof is evident or the presumption great as to the present charge.
4. For serious felony offenses as prescribed by the legislature if the person charged has entered or remained in the United States illegally and if the proof is evident or the presumption great as to the present charge.

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.
2. Protecting against the intimidation of witnesses.
3. Protecting the safety of the victim, any other person or the community.

23. Trial by jury; number of jurors specified by law

Section 23. Trial by jury; number of jurors specified by law

23. The right of trial by jury shall remain inviolate. Juries in criminal cases in which a sentence of death or imprisonment for thirty years or more is authorized by law shall consist of

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Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

Arizona-state-Constitution

twelve persons. In all criminal cases the unanimous consent of the jurors shall be necessary to render a verdict. In all other cases, the number of jurors, not less than six, and the number required to render a verdict, shall be specified by law.

25. Bills of attainder; ex post facto laws; impairment of contract obligations

Section 25. Bills of attainder; ex post facto laws; impairment of contract obligations

25. No bill of attainder, ex-post-facto law, or law impairing the obligation of a contract, shall ever be enacted.

26. Oath of office

Section 26. Oath of office

26. Each justice, judge and justice of the peace shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Arizona, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.

The oath of all judges of courts inferior to the superior court and the oath of justices of the peace shall be filed in the office of the county recorder, and the oath of all other justices and judges shall be filed in the office of the secretary of state.

27. Standing army; quartering soldiers

Section 27. Standing army; quartering soldiers

27. No standing army shall be kept up by this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

28. Treason

Section 28. Treason

28. Treason against the state shall consist only in levying war against the state, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of

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treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

29. Hereditary emoluments, privileges or powers; perpetuities or entailments

Section 29. Hereditary emoluments, privileges or powers; perpetuities or entailments

29. No hereditary emoluments, privileges, or powers shall be granted or conferred, and no law shall be enacted permitting any perpetuity or entailment in this state.

30. Courts of record

Section 30. Courts of record

30. A. The supreme court, the court of appeals and the superior court shall be courts of record. Other courts of record may be established by law, but justice courts shall not be courts of record.

B. All justices and judges of courts of record, except for judges of the superior court and other courts of record inferior to the superior court in counties having a population of less than two hundred fifty thousand persons according to the most recent United States census, shall be appointed in the manner provided in section 37 of this article.

31. Damages for death or personal injuries

Section 31. Damages for death or personal injuries

31. No law shall be enacted in this state limiting the amount of damages to be recovered for causing the death or injury of any person, except that a crime victim is not subject to a claim for damages by a person who is harmed while the person is attempting to engage in, engaging in or fleeing after having engaged in or attempted to engage in conduct that is classified as a felony offense.

32. Constitutional provisions mandatory

Section 32. Constitutional provisions mandatory

32. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

Arizona-state-Constitution

33. Reservation of rights

Section 33. Reservation of rights

33. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

34. Industrial pursuits by state and municipal corporations

Section 34. Industrial pursuits by state and municipal corporations

34. The state of Arizona and each municipal corporation within the state of Arizona shall have the right to engage in industrial pursuits.

35. Actions by illegal aliens prohibited

Section 35. Actions by illegal aliens prohibited

35. A person who is present in this state in violation of federal immigration law related to improper entry by an alien shall not be awarded punitive damages in any action in any court in this state.

36. Preferential treatment or discrimination prohibited; exceptions; definition

Section 36. Preferential treatment or discrimination prohibited; exceptions; definition

36. A. This state shall not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting.

B. This section does not:

1. Prohibit bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education or public contracting.
2. Prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal monies to this state.
3. Invalidate any court order or consent decree that is in force as of the effective date of this section.

C. The remedies available for a violation of this section are the same, regardless of the injured party's race, sex, color, ethnicity or national origin, as are otherwise available for a

Arizona-state-Constitution

violation of the existing antidiscrimination laws of this state.

D. This section applies only to actions that are taken after the effective date of this section.

E. This section is self-executing.

F. For the purposes of this section, "state" includes this state, a city, town or county, a public university, including the university of Arizona, Arizona state university and northern Arizona university, a community college district, a school district, a special district or any other political subdivision in this state.

37. Right to secret ballot; employee representation

Section 37. Right to secret ballot; employee representation

37. The right to vote by secret ballot for employee representation is fundamental and shall be guaranteed where local, state or federal law permits or requires elections, designations or authorizations for employee representation.

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Gila County, Az, Sadie Jo Bingham, Recorder

Proof-of-Claim – G. 2 / 7

:ARS Title 38-233: Filing oaths of record

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:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

VIEW DOCUMENT

The Arizona Revised Statutes have been updated to include the revised sections from the 55th Legislature, 1st Regular Session. Please note that the next update of this compilation will not take place until after the conclusion of the 55th Legislature, 2nd Regular Session, which convenes in January 2022.

DISCLAIMER

This online version of the Arizona Revised Statutes is primarily maintained for legislative drafting purposes and reflects the version of law that is effective on January 1st of the year following the most recent legislative session. The official version of the Arizona Revised Statutes is published by Thomson Reuters.

38-233. Filing oaths of record

- A. The official oaths of state elective officers shall be filed of record in the office of the secretary of state. The official oaths of all other state officers and employees shall be filed of record in the office of the employing state board, commission or agency.
- B. The official oaths of elective county and elective precinct officers shall be filed of record in the office of the county recorder, except the oath of the recorder, which shall be filed with the clerk of the board of supervisors. The official oaths of notaries public shall be endorsed upon their bond and filed with the secretary of state. The official oaths of all other county and precinct officers and employees shall be filed of record in the office of the employing county or precinct board, commission or agency.
- C. The official oaths of all city, town or municipal corporation officers or employees shall be filed of record in the respective office of the employing board, commission or agency of the cities, towns and municipal corporations.
- D. The official oaths of all officers and employees of all school districts shall be filed of record in the school district office.
- E. The official oaths of all officers and employees of each public educational institution except school districts shall be filed of record in the respective offices of the public educational institutions.
- F. The official oath or affirmation required to be filed of record shall be maintained as an official record throughout the person's term, appointment or employment plus a period of time to be determined pursuant to sections 41-151.15 and 41-151.19.



:Proof-of-Claims: Cover-Sheet

23 / 28

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Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

Proof-of-Claim - G. 3 / 7

:Pinal-County-Arizona-State-Office- Trustee-Loyalty-Oaths

:Babeu: :Paul-R.: Babeu: 12-23-2008, 12-31-2012.

:Cavanaugh :Kevin: Cavanaugh: Record-date: 12-21-2020.

:Georgini :Joseph-R.: Georgini: 12-19-2008.

:Goodman :Mike: Goodman: 12-12-16, 12-21-2020.

:House :Todd: House: 12-12-2016.

:House :Todd-H.: House: 12-14-2012.

:Lamb :Mark: Lamb: 12-12-2016, 12-21-2020.

:McCarville :Stephen: McCarville: 01-04-2005.

:McCarville :Stephen-F.: McCarville: 01-06-2009.

:McCord :Michael: McCord: 12-12-2016, 12-21-2020.

:McClure :Jeffrey: McClure: 12-21-2020.

:Miller :Stephen-Q: Miller: 12-04-12, 12-08-2016, 12-21-2020.

:Rios :Pete: Rios: 01-05-2009, 01-02-2013, 12-14-2016.

:Riuz :Lionel-D.: Ruiz: 01-03-2005,

:Ross :Virginia: Ross: 12-18-2012, 12-05-2016, 12-15-2020.

:Serdy :Jeff: Serdy: 12-21-2020.

:Smith :Anthony: Smith: 12-05-2012, 12-12-2016.

:Volkmer :Kent: Volkmer: 12-12-2016, 12-21-2020.

:Wolf :Douglas: Wolf: 12-12-2016, 12-21-2020.

:Wolf :Douglas-T.: Wolf: 12-03-2012,

:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

23 / 28

W/C Bos



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLER

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Gila County, Az, Sadie Jo Bingham, Recorder

DATE/TIME: 01/07/09 1225

FEE: \$0.00

PAGES: 1

FEE NUMBER: 2009-001432

Sec. 38-231 amended, Arizona revised Statutes:

38-231. OFFICERS AND EMPLOYEES REQUIRED TO TAKE LOYALTY OATH; FORM; PENALTY

A. In order to insure the statewide application of this section on a uniform basis, each board, commission, agency, and independent office of the state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district, and public educational institution, shall immediately upon the effective date of this act completely reproduce section 38-231 as set forth herein, to the end that the form of written oath or affirmation required herein shall contain all of the provisions of said section for use by all officers and employees of all boards, commissions, agencies, and independent offices.

B. For the purposes of this section, the term officer or employees means any person elected, appointed or employed, either on a part-time or full-time basis, by the state, or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

C. Any officer or employee elected, appointed, or employed prior to the effective date of this act shall not later than ninety days after the effective date of this act take and subscribe the form of oath or affirmation set forth in this section.

D. Any officer or employee within the meaning of this section who fails to take and subscribe the oath or affirmation provided by this section within the time limits prescribed by this section shall not be entitled to any compensation unless and until such officer or employee does so take and subscribe to the form of oath or affirmation set forth in this section.

E. Any officer or employee as defined in this section having taken the form of oath or affirmation prescribed by this section, and knowingly or willfully at the time of subscribing the oath or affirmation, or at any time thereafter during their term of office or employment, does commit or aid in the commission of any act to overthrow by force or violence the government of this state or of any of its political subdivisions, or advocates the overthrow by force or violence of the government of this state or of any of its political subdivisions or during such term of office or employment knowingly and willfully becomes or remains a member of the communist party of the United States or its successors or any of its subordinate organizations or any other organization having for one of its purposes the overthrow by force or violence of the government of the State of Arizona or any of its political subdivisions, and said officer or employee as defined in this section prior to becoming or remaining a member of such organization or organizations has knowledge of said unlawful purpose of said organization or organizations, shall be guilty of a felony and upon conviction thereof shall be subject to all the penalties for perjury, in addition, upon conviction under this section the officer or employee shall be deemed discharged from said office or employment and shall not be entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to said office or employment.

F. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee before any officer or employee enters upon the duties of this office or employment shall take and subscribe the following oath or affirmation.

STATE OF ARIZONA)

) ss

County of Pinal)

LOYALTY OATH OF OFFICE

I, (Print) Paul R. Baber do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and Laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign or domestic, and that I will faithfully and impartially discharge the duties of the office of Sheriff according to the best of my ability. So Help Me God (or so I do affirm).

Paul R. Baber
Signature

12/23/08
Date

Subscribed and sworn to before me this 23 day of December A.D. 2008.

My commission expires Dec. 16, 2011

Notary Public



Loyalty Oath Of Office

STATE OF ARIZONA)
) SS
COUNTY OF PINAL)

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Gila County, Az, Sadie Jo Bingham, Recorder



I, **Paul R. Babeu**, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Sheriff according to the best of my ability, so help me God.



Signature of officer

Subscribed and sworn to before me this 31 Day of December, 2012





Notary Public

My commission expires: Sept. 17, 2014



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER**

When recorded mail to:
Pinal County Human Resources

DATE/TIME: 01/03/2013 1013
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2013-000388



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Oath of Office

DOCUMENT TITLE

485
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OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTL

Loyalty Oath Of Office

DATE/TIME: 01/05/09 1421
FEE: \$0.00
PAGES: 1
FEE NUMBER: 2009-000621

STATE OF ARIZONA)

COUNTY OF PINAL)

SS

I, Joseph R. Georgini, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge of the duties of the office of

Judge of the Arizona Superior Court in Pinal County, Division 3

according to the best of my ability, so help me God (or so I do affirm.)

Joseph R. Georgini
Signature of Elected Official

Subscribed and sworn to before me this 19th Day of December,
2008

Stephanie A. Jordan
Notary Public

My commission expires: May 5, 2011



Original Loyalty Oath of Office filed with the Secretary of State.



When Recorded Return To:
Pinal County Clerk of the Board
PO Box 827
Florence, AZ

LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

A.R.S. §38-231

I Mike Goodman do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Supervisor, District 2 according to the best of my ability, so help me God (or so I do affirm).

Mike Goodman
(signature of officer or employee)

12/10/16
(date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 12 day of December, 2016.

(seal)

Stephanie L. Chanda

2



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

When recorded mail to:
PINAL COUNTY CLERK OF THE BOARD
PO BOX 827
FLORENCE, AZ

DATE/TIME: 12/16/2016 11:57
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2016-084695



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591

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12/02/2021 10:19:01 AM Receipt #: 21-13425

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Gila County, Az, Sadie Jo Bingham, Recorder



LOYALTY OATH OF OFFICE

State of Arizona
County of Pinal

I Mike Goodman do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Supervisor, District 2 according to the best of my ability, so help me God (or so I do affirm).

Mike B. Goodman

(Signature of officer or employee)

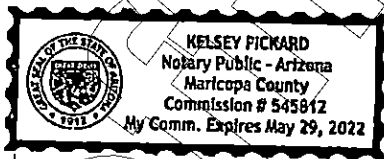
12/27/20

(Date of signing)

State of Arizona
County of Pinal

Subscribed and sworn (or affirmed) before me this 21st day of December, 2020

(SEAL)



Kelsey Pickard

Notary Public





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 12/21/2020 1418

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2020-133586

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P.O. Box 827
Florence, Arizona 85132

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LOYALTY OATH OF OFFICE

Mike Goodman
Pinal County Government
Supervisor, District 2

593

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Gila County, Az, Sadie Jo Bingham, Recorder



OATH OF OFFICE
Pinal County Board Supervisor

I, the undersigned, hereby execute this document in compliance with A.R.S. §38-231:

Officers and employees required to take loyalty oath; form, classification, definition

A. In order to ensure the statewide application of this section on a uniform basis, each board, commission, agency and independent office of this state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district and public educational institution, shall completely reproduce this section so that the form of written oath or affirmation required in this section contains all of the provisions of this section for use by all officers and employees of all boards, commissions, agencies and independent offices.

B. Any officer or employee who fails to take and subscribe to the oath or affirmation provided by this section within the time limits prescribed by this section is not entitled to any compensation until the officer or employee does so take and subscribe to the form of oath or affirmation prescribed by this section.

C. Any officer or employee having taken the form of oath or affirmation prescribed by this section, and knowingly at the time of subscribing to the oath or affirmation, or at any time thereafter during the officer's or employee's term of office or employment, does commit or aid in the commission of any act to overthrow by force, violence or terrorism as defined in section 13-2301 the government of this state or of any of its political subdivisions, or advocates the overthrow by force, violence or terrorism as defined in section 13-2301 of the government of this state or of any of its political subdivisions, is guilty of a class 4 felony and, on conviction under this section, the officer or employee is deemed discharged from the office or employment and is not entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to the office or employment.

D. Any of the persons referred to in article XVIII, section 10, Constitution of Arizona, as amended, relating to the employment of aliens, are exempted from any compliance with this section.

E. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of the office or employment, the officer or employee shall take and subscribe the following oath or affirmation.

F. For the purposes of this section, "officer or employee" means any person elected, appointed or employed, either on a part-time or full-time basis, by this state or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution or any board, commission or agency of any county, city, town, municipal corporation, school district or public educational institution.

A.R.S. §38-231 (E) Oath.

State of Arizona, County of Pinal

I, David H. House do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of District 5 according to the best of my ability, so help me God (or so I do affirm)

Signature

Subscribed and sworn to before me on this 14th day of December, 2012.

(SEAL)

Notary Public



OFFICIAL SEAL
M. TERESA BARR
Notary Public - State of Arizona
PINAL COUNTY
My Comm. Expires Dec. 30, 2012

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OFFICIAL RECORDS OF
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Oath of Office

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Form RE-49

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Pinal County Clerk of the Board
PO Box 827
Florence, AZ

LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

A.R.S. §38-231

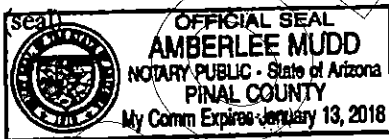
I Todd House do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Supervisor, District 5 according to the best of my ability, so help me God (or so I do affirm).


(signature of officer or employee)

12/12/16
(date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 12 day of December
2016




Notary Public



2



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

When recorded mail to:
PINAL COUNTY CLERK OF THE BOARD
PO BOX 827
FLORENCE, AZ

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Florence, AZ

LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

A.R.S. §38-231

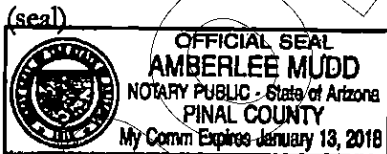
I Mark Lamb do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Sheriff according to the best of my ability, so help me God (or so I do affirm).


(signature of officer or employee)

12/12/16
(date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 12 day of December, 2016.



Amberlee Mudd
Notary Public





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS

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C:\Users\veronicaor\Desktop\Caption Heading.doc



LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

I Mark Lamb do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Sheriff according to the best of my ability, so help me God (or so I do affirm).

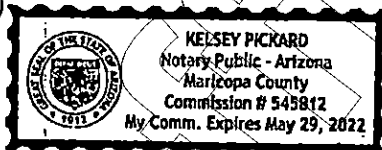
[Signature]
(Signature of officer or employee)

December 21, 2020
(Date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 21st day of December, 2020

(SEAL)



[Signature]
Notary Public





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 12/21/2020 1418

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2020-133592

When recorded mail to:
Clerk of the Board Office
P.O. Box 827
Florence, Arizona 85132

(The above space reserved for recording information)

LOYALTY OATH OF OFFICE

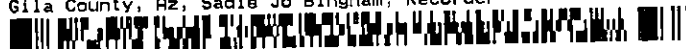
Mark Lamb
Pinal County Government
Sheriff

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2021-016195 MISC Page: 602 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



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OF AL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

2021-016195 MISC Page: 603 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

DATE/TIME: 01/06/05 1537

FEE: \$0.00

PAGES: 1

FEE NUMBER: 2005-001953

Sec.38-231 amended, Arizona Revised Statutes:

38-231. OFFICERS AND EMPLOYEES REQUIRED TO TAKE LOYALTY OATH; FORM; PENALTY

A. In order to insure the statewide application of this section on a uniform basis, each board, commission, agency, and independent office of the state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district, and public educational institution, shall immediately upon the effective date of this act completely reproduce section 38-231 as set forth herein, to the end that the form of written oath or affirmation required herein shall contain all of the provisions of said section for use by all officers and employees of all boards, commissions, agencies, and independent offices.

B. For the purposes of this section, the term officer or employees means any person elected, appointed, or employed, either on a part-time or full-time basis, by the state, or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

C. Any officer or employee elected, appointed, or employed prior to the effective date of this act shall not later than ninety days after the effective date of this act take and subscribe the form of oath or affirmation set forth in this section.

D. Any officer or employee within the meaning of this section who fails to take and subscribe the oath or affirmation provided by this section within the time limits prescribed by this section shall not be entitled to any compensation unless and until such officer or employee does so take and subscribe to the form of oath or affirmation set forth in this section.

E. Any officer or employee as defined in this section having taken the form of oath or affirmation prescribed by this section, and knowingly or willfully at the time of subscribing the oath or affirmation, or at any time thereafter during their term of office or employment, does commit or aid in the commission of any act to overthrow by force or violence the government of this state or of any of its political subdivisions, or advocates the overthrow by force or violence of the government of this state or of any of its political subdivisions or during such term of office or employment knowingly and willfully becomes or remains a member of the communist party of the United States or its successors or any of its subordinate organizations or any other organization having for one of its purposes the overthrow by force of violence of the government of the State of Arizona or any of its political subdivisions, and said officer or employee as defined in this section prior to becoming or remaining a member of such organization or organizations has knowledge of said unlawful purpose of said organization or organizations, shall be guilty of a felony and upon conviction thereof shall be subject to all the penalties for perjury; in addition, upon conviction under this section the officer or employee shall be deemed discharged from said office or employment and shall not be entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to said office or employment.

F. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee before any officer or employee enters upon the duties of this office or employment shall take and subscribe the following oath or affirmation.

STATE OF ARIZONA

ss:

LOYALTY OATH OF OFFICE

County of Pinal

I, Stephen McCarville solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and Laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign or domestic; and that I will faithfully and impartially discharge the duties of the office of Superior Court Judge, Division 5 according to the best of my ability, So Help Me God (or so I do affirm).

Step McCarville

Signature

Subscribed and sworn to before me this 4th day of January A.D. 2005.



OFFICIAL SEAL
KARON L. SIMMONS
NOTARY PUBLIC-STATE OF ARIZONA
PINAL COUNTY
My commission expires 4-21-06

My commission expires

Karon L. Simmons

Notary Public

①
PINAL COUNTY SUPERIOR COURT



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

Loyalty Oath Of Office

DATE/TIME: 02/26/09 1341
FEE: \$0.00
PAGES: 1
FEE NUMBER: 2009-019342

STATE OF ARIZONA)

SS

COUNTY OF PINAL)

I, Stephen F. McCarville, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge of the duties of the office of

Judge of the Arizona Superior Court in Pinal County, Division 5

according to the best of my ability, so help me God (or so I do affirm.)

Stephen F. McCarville

Signature of officer or employee

Subscribed and sworn to before me this 6 Day of January,
2009.



Official Seal
Monica Rios

Notary Public - State of Arizona
Pinal County

Monica Rios
Notary Public

My commission expires: My Commission Expires Jan. 15, 2011



When Recorded Return To:
Pinal County Clerk of the Board
PO-Box 827
Florence, AZ

LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

A.R.S. §38-231

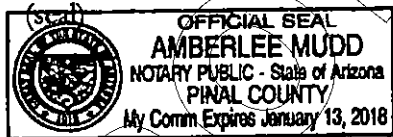
I Michael McCord do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Treasurer according to the best of my ability, so help me God (or so I do affirm).


(signature of officer or employee)

12-12-16
(date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 12 day of December,
2016.




Notary Public



2



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

When recorded mail to:
PINAL COUNTY CLERK OF THE BOARD
PO BOX 827
FLORENCE, AZ

DATE/TIME: 12/16/2016 1157
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2016-084703



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LOYALTY OATH OF OFFICE

DOCUMENT TITLE

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RECORDER'S OFFICE.

2021-016195 MISC Page: 606 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



LOYALTY OATH OF OFFICE

State of Arizona
County of Pinal

I **Michael McCord** do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of **Pinal County Treasurer** according to the best of my ability, so help me God (or so I do affirm).

(Signature of officer or employee)

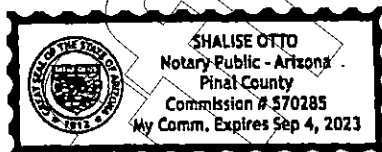
12.21.2020

(Date of signing)

State of Arizona
County of Pinal

Subscribed and sworn (or affirmed) before me this 21 day of December, 2020

(SEAL)



(Signature of Notary Public)
Notary Public





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 12/21/2020 1418

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2020-133593

When recorded mail to:
Clerk of the Board Office
P.O. Box 827
Florence, Arizona 85132

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LOYALTY OATH OF OFFICE

Michael McCord
Pinal County Government
Treasurer

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2021-016195 MISC Page: 608 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



LOYALTY OATH OF OFFICE

State of Arizona
County of Pinal

I **Jeffrey McClure** do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of **Pinal County Supervisor, District 4** according to the best of my ability, so help me God (or so I do affirm).

(Signature of officer or employee)

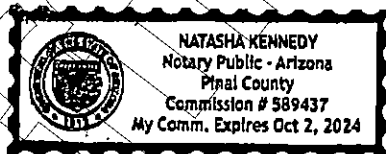
12-21-2020

(Date of signing)

State of Arizona
County of Pinal

Subscribed and sworn (or affirmed) before me this 21 day of December, 2020

(SEAL)



(Signature)
Notary Public





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 12/21/2020 1418

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2020-133588

When recorded mail to:
Clerk of the Board Office
P.O. Box 827
Florence, Arizona 85132

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LOYALTY OATH OF OFFICE

Jeffrey McClure
Pinal County Government
Supervisor, District 4

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2021-016195 MISC Page: 610 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



OATH OF OFFICE
Pinal County Board Supervisor

I, the undersigned, hereby execute this document in compliance with A.R.S. §38-231.

Officers and employees required to take loyalty oath; form; classification; definition

A. In order to ensure the statewide application of this section on a uniform basis, each board, commission, agency and independent office of this state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district and public educational institution, shall completely reproduce this section so that the form of written oath or affirmation required in this section contains all of the provisions of this section for use by all officers and employees of all boards, commissions, agencies and independent offices.

B. Any officer or employee who fails to take and subscribe to the oath or affirmation provided by this section within the time limits prescribed by this section is not entitled to any compensation until the officer or employee does so take and subscribe to the form of oath or affirmation prescribed by this section.

C. Any officer or employee having taken the form of oath or affirmation prescribed by this section, and knowingly at the time of subscribing to the oath or affirmation, or at any time thereafter during the officer's or employee's term of office or employment, does commit or aid in the commission of any act to overthrow by force, violence or terrorism as defined in section 13-2301 the government of this state or of any of its political subdivisions, or advocates the overthrow by force, violence or terrorism as defined in section 13-2301 of the government of this state or of any of its political subdivisions, is guilty of a class 4 felony and, on conviction under this section, the officer or employee is deemed discharged from the office or employment and is not entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to the office or employment.

D. Any of the persons referred to in article XVIII, section 10, Constitution of Arizona, as amended, relating to the employment of aliens, are exempted from any compliance with this section.

E. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of the office or employment, the officer or employee shall take and subscribe the following oath or affirmation:

F. For the purposes of this section, "officer or employee" means any person elected, appointed or employed, either on a part-time or full-time basis, by this state or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution or any board, commission or agency of any county, city, town, municipal corporation, school district or public educational institution.

A.R.S. §38-231 (E) Oath:

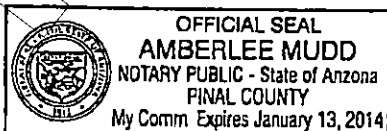
State of Arizona, County of Pinal

I, STEPHEN SMITH do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of SUPERVISOR according to the best of my ability, so help me God (or so I do affirm)

Signature

Subscribed and sworn to before me on this 4th day of December, 2012.

(SEAL)



Notary Public

2021-016195 MISC Page: 611 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER

When recorded mail to:
Pinal County Human Resources

DATE/TIME: 01/03/2013 1013
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2013-000382



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Oath of Office

DOCUMENT TITLE

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Form RE-49

2021-016195 MISC Page: 612 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



When Recorded Return To:
Pinal County Clerk of the Board
PO Box 827
Florence, AZ

LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

A.R.S. §38-231

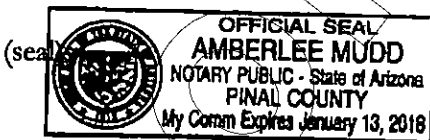
I Stephen Q. Miller do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Supervisor, District 3 according to the best of my ability, so help me God (or so I do affirm).



(signature of officer or employee)

12-8-16
(date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 8th day of December 2016.




Notary Public



2



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

When recorded mail to:
PINAL COUNTY CLERK OF THE BOARD
PO BOX 827
FLORENCE, AZ

DATE/TIME: 12/16/2016 1157
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2016-084696



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LOYALTY OATH OF OFFICE

DOCUMENT TITLE

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RECORDER'S OFFICE.

2021-016195 MISC Page: 614 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



LOYALTY OATH OF OFFICE

State of Arizona
County of Pinal

I **Stephen Q. Miller** do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of **Pinal County Supervisor, District 3** according to the best of my ability, so help me God (or so I do affirm).

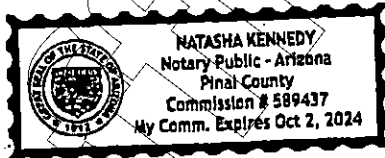
(Signature of officer or employee)

(Date of signing)

State of Arizona
County of Pinal

Subscribed and sworn (or affirmed) before me this 21 day of December, 2020

(SEAL)



(Signature of Notary Public)





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 12/21/2020 1418

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2020-133587

When recorded mail to:
Clerk of the Board Office
P.O. Box 827
Florence, Arizona 85132

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LOYALTY OATH OF OFFICE

Stephen Q. Miller
Pinal County Government
Supervisor, District 3

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2021-016195 MISC Page: 616 of 774

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Gila County, Az, Sadie Jo Bingham, Recorder



W/C BOS



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

2021-016195 MISC Page: 617 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

DATE/TIME: 01/07/09 1225

FEE: \$0.00

PAGES: 1

FEE NUMBER: 2009-001431

Sec. 38-231 amended, Arizona revised Statutes:

38-231. OFFICERS AND EMPLOYEES REQUIRED TO TAKE LOYALTY OATH; FORM; PENALTY

A. In order to insure the statewide application of this section on a uniform basis, each board, commission, agency, and independent office of the state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district, and public educational institution, shall immediately upon the effective date of this act completely reproduce section 38-231 as set forth herein, to the end that the form of written oath or affirmation required herein shall contain all of the provisions of said section for use by all officers and employees of all boards, commissions, agencies, and independent offices.

B. For the purposes of this section, the term officer or employees means any person elected, appointed or employed, either on a part-time or full-time basis, by the state, or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

C. Any officer or employee elected, appointed, or employed prior to the effective date of this act shall not later than ninety days after the effective date of this act take and subscribe the form of oath or affirmation set forth in this section.

D. Any officer or employee within the meaning of this section who fails to take and subscribe the oath or affirmation provided by this section within the time limits prescribed by this section shall not be entitled to any compensation unless and until such officer or employee does so take and subscribe to the form of oath or affirmation set forth in this section.

E. Any officer or employee as defined in this section having taken the form of oath or affirmation prescribed by this section, and knowingly or willfully at the time of subscribing the oath or affirmation, or at any time thereafter during their term of office or employment, does commit or aid in the commission of any act to overthrow by force or violence the government of this state or of any of its political subdivisions, or advocates the overthrow by force or violence of the government of this state or of any of its political subdivisions or during such term of office or employment knowingly and willfully becomes or remains a member of the communist party of the United States of its successors or any of its subordinate organizations or any other organization having for one of its purposes the overthrow by force of violence of the government of the State of Arizona or any of its political subdivisions, and said officer or employee as defined in this section prior to becoming or remaining a member of such organization or organizations has knowledge of said unlawful purpose of said organization or organizations, shall be guilty of a felony and upon conviction thereof shall be subject to all the penalties for perjury, in addition, upon conviction under this section the officer or employee shall be deemed discharged from said office or employment and shall not be entitled to any additional compensation or any other embezzlements or benefits which may have been incident or appurtenant to said office or employment.

F. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee before any officer or employee enters upon the duties of this office or employment shall take and subscribe the following oath or affirmation.

STATE OF ARIZONA)

) ss

County of Pinal)

LOYALTY OATH OF OFFICE

613
1. (Print) PETE RIOS do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and Laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign or domestic, and that I will faithfully and impartially discharge the duties of the office of COUNTY SUPERVISOR D-1 according to the best of my ability, So Help Me God (or so I do affirm).

Signature

Date

Subscribed and sworn to before me this 5 day of January A.D. 2009

My commission expires Dec. 16, 2011 Notary Public Lynette Lipson



OATH OF OFFICE
Pete Rios, Pinal County Supervisor District 1

I, the undersigned, hereby execute this document in compliance with A.R.S. §38-231:

Officers and employees required to take loyalty oath; form; classification; definition

A. In order to ensure the statewide application of this section on a uniform basis, each board, commission, agency and independent office of this state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district and public educational institution, shall completely reproduce this section so that the form of written oath or affirmation required in this section contains all of the provisions of this section for use by all officers and employees of all boards, commissions, agencies and independent offices.

B. Any officer or employee who fails to take and subscribe to the oath or affirmation provided by this section within the time limits prescribed by this section is not entitled to any compensation until the officer or employee does so take and subscribe to the form of oath or affirmation prescribed by this section.

C. Any officer or employee having taken the form of oath or affirmation prescribed by this section, and knowingly at the time of subscribing to the oath or affirmation, or at any time thereafter during the officer's or employee's term of office or employment, does commit or aid in the commission of any act to overthrow by force, violence or terrorism as defined in section 13-2301 the government of this state or of any of its political subdivisions, or advocates the overthrow by force, violence or terrorism as defined in section 13-2301 of the government of this state or of any of its political subdivisions, is guilty of a class 4 felony and, on conviction under this section, the officer or employee is deemed discharged from the office or employment and is not entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to the office or employment.

D. Any of the persons referred to in article XVIII, section 10, Constitution of Arizona, as amended, relating to the employment of aliens, are exempted from any compliance with this section.

E. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of the office or employment, the officer or employee shall take and subscribe the following oath or affirmation:

F. For the purposes of this section, "officer or employee" means any person elected, appointed or employed, either on a part-time or full-time basis, by this state or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution or any board, commission or agency of any county, city, town, municipal corporation, school district or public educational institution.

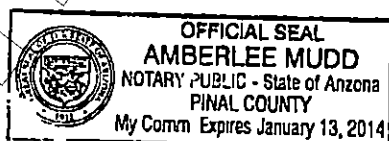
A.R.S. §38-231 (E) Oath:

State of Arizona, County of Pinal
I, **Pete Rios**, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of **Pinal County Supervisor District 1**, according to the best of my ability, so help me God (or so I do affirm).

Signature

Subscribed and sworn to before me on this 2nd day of January, 2021.

(SEAL)



Notary Public

2021-016195 MISC Page: 618 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER**

When recorded mail to:
Pinal County Human Resources

DATE/TIME: 01/03/2013 1013
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2013-000380



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Oath of Office

DOCUMENT TITLE

617
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Form RE-49

2021-016195 MISC Page: 619 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



When Recorded Return To:
Pinal County Clerk of the Board
PO Box 827
Florence, AZ

LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

A.R.S. §38-231

I Pete Rios do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Supervisor, District 1 according to the best of my ability, so help me God (or so I do affirm).

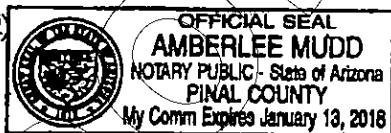
Pete Rios
(signature of officer or employee)

12/14/16
(date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 14 day of December,
2016.

(seal)



Amberlee Mudd
Notary Public

2



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

When recorded mail to:
PINAL COUNTY CLERK OF THE BOARD
PO BOX 827
FLORENCE, AZ

DATE/TIME: 12/16/2016 1157
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2016-084694



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LOYALTY OATH OF OFFICE

DOCUMENT TITLE

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RECORDER'S OFFICE.

2021-016195 MISC Page: 621 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



w/c



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

2021-016195 MISC Page: 622 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

DATE/TIME: 01/06/05 1537
FEE: \$0.00
PAGES: 1
FEE NUMBER: 2005-001952

Sec.38-231 amended, Arizona Revised Statutes:

38-231: OFFICERS AND EMPLOYEES REQUIRED TO TAKE LOYALTY OATH; FORM; PENALTY

A. In order to insure the statewide application of this section on a uniform basis, each board, commission, agency, and independent office of the state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district, and public educational institution, shall immediately upon the effective date of this act completely reproduce section 38-231 as set forth herein, to the end that the form of written oath or affirmation required herein shall contain all of the provisions of said section for use by all officers and employees of all boards, commissions, agencies, and independent offices.

B. For the purposes of this section, the term officer or employees means any person elected, appointed, or employed, either on a part-time or full-time basis, by the state, or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

C. Any officer or employee elected, appointed, or employed prior to the effective date of this act shall not later than ninety days after the effective date of this act take and subscribe the form of oath or affirmation set forth in this section.

D. Any officer or employee within the meaning of this section who fails to take and subscribe the oath or affirmation provided by this section within the time limits prescribed by this section shall not be entitled to any compensation unless and until such officer or employee does so take and subscribe to the form of oath or affirmation set forth in this section.

E. Any officer or employee as defined in this section having taken the form of oath or affirmation prescribed by this section, and knowingly or willfully at the time of subscribing the oath or affirmation, or at any time thereafter during their term of office or employment, does commit or aid in the commission of any act to overthrow by force or violence the government of this state or of any of its political subdivisions, or advocates the overthrow by force or violence of the government of this state or of any of its political subdivisions or during such term of office or employment knowingly and willfully becomes or remains a member of the communist party of the United States or its successors or any of its subordinate organizations, or any other organization having for one of its purposes the overthrow by force or violence of the government of the State of Arizona or any of its political subdivisions, and said officer or employee as defined in this section prior to becoming or remaining a member of such organization or organizations has knowledge of said unlawful purpose of said organization or organizations, shall be guilty of a felony and upon conviction thereof shall be subject to all the penalties for perjury; in addition, upon conviction under this section the officer or employee shall be deemed discharged from said office or employment and shall not be entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to said office or employment.

F. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee before any officer or employee enters upon the duties of this office or employment shall take and subscribe the following oath or affirmation.

STATE OF ARIZONA)

County of Pinal) ss:

LOYALTY OATH OF OFFICE

I, Lionel D. Ruiz do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and Laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign or domestic, and that I will faithfully and impartially discharge the duties of the office of Supervisor District 1 according to the best of my ability, So Help Me God (or so I do affirm)

Signature

Subscribed and sworn to before me this 3th day of January A.D. 2005.

My commission expires

Notary Public

**OATH OF OFFICE
RECORDER**

I, the undersigned, hereby execute this document in compliance with A.R.S. §38-231:

Officers and employees required to take loyalty oath; form; classification; definition

A. In order to ensure the statewide application of this section on a uniform basis, each board, commission, agency and independent office of this state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district and public educational institution, shall completely reproduce this section so that the form of written oath or affirmation required in this section contains all of the provisions of this section for use by all officers and employees of all boards, commissions, agencies and independent offices.

B. Any officer or employee who fails to take and subscribe to the oath or affirmation provided by this section within the time limits prescribed by this section is not entitled to any compensation until the officer or employee does so take and subscribe to the form of oath or affirmation prescribed by this section.

C. Any officer or employee having taken the form of oath or affirmation prescribed by this section, and knowingly at the time of subscribing to the oath or affirmation, or at any time thereafter during the officer's or employee's term of office or employment, does commit or aid in the commission of any act to overthrow by force, violence or terrorism as defined in section 13-2301 the government of this state or of any of its political subdivisions, or advocates the overthrow by force, violence or terrorism as defined in section 13-2301 of the government of this state or of any of its political subdivisions, is guilty of a class 4 felony and, on conviction under this section, the officer or employee is deemed discharged from the office or employment and is not entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to the office or employment.

D. Any of the persons referred to in article XVIII, section 10, Constitution of Arizona, as amended, relating to the employment of aliens, are exempted from any compliance with this section.

E. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of the office or employment, the officer or employee shall take and subscribe the following oath or affirmation:

F. For the purposes of this section, "officer or employee" means any person elected, appointed or employed, either on a part-time or full-time basis, by this state or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution or any board, commission or agency of any county, city, town, municipal corporation, school district or public educational institution.

A.R.S. §38-231 (E) Oath:

State of Arizona, County of Pinal

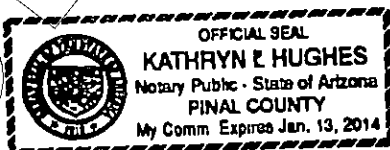
I, VIRGINIA ROSS do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of RECORDER according to the best of my ability, so help me God (or so I do affirm).

Signature

Subscribed and sworn to before me on this 18 day of December, 2012.

(SEAL)

Notary Public



2021-016195 MISC Page: 623 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder





**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER**

When recorded mail to:
Pinal County Human Resources

DATE/TIME: 01/03/2013 1013
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2013-000387



(The above space reserved for recording information)

Oath of Office

DOCUMENT TITLE

622

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Form RE-49

2021-016195 MISC Page: 624 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



LOYALTY OATH OF OFFICE

State of Arizona
County of Pinal

I Virginia Ross do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Recorder, according to the best of my ability, so help me God (or so I do affirm).

Virginia Ross

(signature of officer or employee)

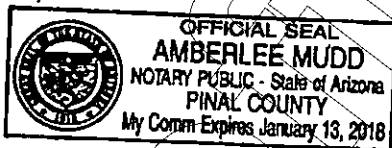
12-5-2016

(date of signing)

State of Arizona
County of Pinal

Subscribed and sworn (or affirmed) before me this 5th day of December, 2016.

(seal)



Allen P. Allen
Notary Public



2



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

When recorded mail to:
PINAL COUNTY CLERK OF THE BOARD
PO BOX 827
FLORENCE, AZ

DATE/TIME: 12/16/2016 1157
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2016-084704



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LOYALTY OATH OF OFFICE

DOCUMENT TITLE

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RECORDER'S OFFICE.

624



LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

I Virginia Ross do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Recorder according to the best of my ability, so help me God (or so I do affirm).

Virginia Ross

(Signature of officer or employee)

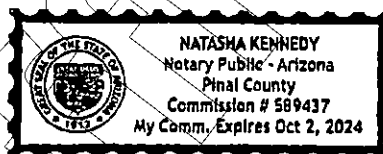
12-15-2020

(Date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 15 day of December, 2020

(SEAL)



Natasha Kennedy

(Notary Public)





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 12/21/2020 1418

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2020-133594

When recorded mail to:
Clerk of the Board Office
P.O. Box 827
Florence, Arizona 85132

(The above space reserved for recording information)

LOYALTY OATH OF OFFICE

Virginia Ross
Pinal County Government
Recorder

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2021-016195 MISC Page: 628 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



LOYALTY OATH OF OFFICE

State of Arizona
County of Pinal

I **Jeff Serdy** do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of **Pinal County Supervisor, District 5** according to the best of my ability, so help me God (or so I do affirm).


(Signature of officer or employee)

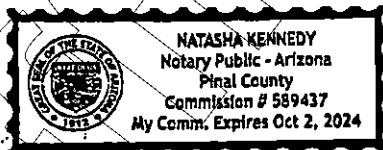
12-21-2020

(Date of signing)

State of Arizona
County of Pinal

Subscribed and sworn (or affirmed) before me this 21 day of December, 2020

(SEAL)




Notary Public



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross**

DATE/TIME: 12/21/2020 1418

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2020-133589

When recorded mail to:
Clerk of the Board Office
P.O. Box 827
Florence, Arizona 85132

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LOYALTY OATH OF OFFICE

Jeff Serdy
Pinal County Government
Supervisor, District 5

628

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OATH OF OFFICE
PINAL COUNTY BOARD OF SUPERVISORS

I, the undersigned, hereby execute this document in compliance with A.R.S. §38-231:

Officers and employees required to take loyalty oath; form, classification, definition

A In order to ensure the statewide application of this section on a uniform basis, each board, commission, agency and independent office of this state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district and public educational institution, shall completely reproduce this section so that the form of written oath or affirmation required in this section contains all of the provisions of this section for use by all officers and employees of all boards, commissions, agencies and independent offices.

B Any officer or employee who fails to take and subscribe to the oath or affirmation provided by this section within the time limits prescribed by this section is not entitled to any compensation until the officer or employee does so take and subscribe to the form of oath or affirmation prescribed by this section.

C Any officer or employee having taken the form of oath or affirmation prescribed by this section, and knowingly at the time of subscribing to the oath or affirmation, or at any time thereafter during the officer's or employee's term of office or employment, does commit or aid in the commission of any act to overthrow by force, violence or terrorism as defined in section 13-2301 the government of this state or of any of its political subdivisions, or advocates the overthrow by force, violence or terrorism as defined in section 13-2301 of the government of this state or of any of its political subdivisions, is guilty of a class 4 felony and, on conviction under this section, the officer or employee is deemed discharged from the office or employment and is not entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to the office or employment.

D Any of the persons referred to in article XVIII, section 10, Constitution of Arizona, as amended, relating to the employment of aliens, are exempted from any compliance with this section.

E In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of the office or employment, the officer or employee shall take and subscribe the following oath or affirmation:

F For the purposes of this section, "officer or employee" means any person elected, appointed or employed, either on a part-time or full-time basis, by this state or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution or any board, commission or agency of any county, city, town, municipal corporation, school district or public educational institution.

A.R.S. §38-231 (E) Oath:

State of Arizona, County of Pinal

I, Anthony Smith do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Supervisor District 4 according to the best of my ability, so help me God (or so I do affirm)

Signature

Subscribed and sworn to before me on this 5 day of December, 2012.

(SEAL)

Notary Public



2021-016195 MISC Page: 631 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER

When recorded mail to:
Pinal County Human Resources

DATE/TIME: 01/03/2013 1013
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2013-000383



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Oath of Office

DOCUMENT TITLE

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Form RE-49

2021-016195 MISC Page: 632 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



When Recorded Return To:
Pinal County Clerk of the Board
PO Box 827
Florence, AZ

LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

A.R.S. §38-231

I Anthony Smith do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Supervisor, District 4 according to the best of my ability, so help me God (or so I do affirm).

Anthony Smith
(signature of officer or employee)

12/12/16
(date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 12 day of December, 2016.

(seal)



Amberlee Mudd
Notary Public

2



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

When recorded mail to:
PINAL COUNTY CLERK OF THE BOARD
PO BOX 827
FLORENCE, AZ

DATE/TIME: 12/16/2016 1157
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2016-084697



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LOYALTY OATH OF OFFICE

DOCUMENT TITLE

632
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2021-016195 MISC Page: 634 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

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When Recorded Return To:
Pinal County Clerk of the Board
PO Box 827
Florence, AZ

LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

A.R.S. §38-231

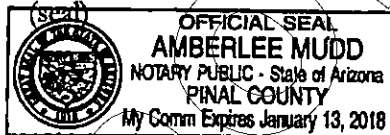
I Kent Volkmer do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Attorney according to the best of my ability, so help me God (or so I do affirm).

Kent V-
(signature of officer or employee)

12/12/16
(date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 12 day of December
2016



Alle Cox, Alle Cox
Notary Public

2



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

When recorded mail to:
PINAL COUNTY CLERK OF THE BOARD
PO BOX 827
FLORENCE, AZ

DATE/TIME: 12/16/2016 1157
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2016-084700



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LOYALTY OATH OF OFFICE

DOCUMENT TITLE

634
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RECORDER'S OFFICE.

2021-016195 MISC Page: 636 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder

C:\Users\veronicaor\Desktop\Caption Heading.doc



LOYALTY OATH OF OFFICE

State of Arizona
County of Pinal

I Kent Volkmer do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Attorney according to the best of my ability, so help me God (or so I do affirm).

Kent Volkmer
(Signature of officer or employee)

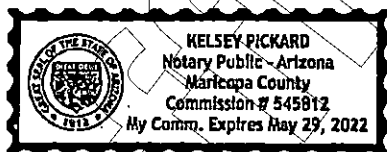
12/21/2020

(Date of signing)

State of Arizona
County of Pinal

Subscribed and sworn (or affirmed) before me this 21st day of December, 2020

(SEAL)



Kelsey Rickard
Notary Public





**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross**

DATE/TIME: 12/21/2020 1418

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2020-133591

When recorded mail to:
Clerk of the Board Office
P.O. Box 827
Florence, Arizona 85132

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LOYALTY OATH OF OFFICE

**Kent Volkmer
Pinal County Government
County Attorney**

636

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2021-016195 MISC Page: 638 of 774

12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



**OATH OF OFFICE
PINAL COUNTY ASSESSOR**

I, the undersigned, hereby execute this document in compliance with A.R.S. §38-231 and §11-542

Officers and employees required to take loyalty oath, form, classification, definition

A. In order to ensure the statewide application of this section on a uniform basis, each board, commission, agency and independent office of this state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district and public educational institution, shall completely reproduce this section so that the form of written oath or affirmation required in this section contains all of the provisions of this section for use by all officers and employees of all boards, commissions, agencies and independent offices.

B. Any officer or employee who fails to take and subscribe to the oath or affirmation provided by this section within the time limits prescribed by this section is not entitled to any compensation until the officer or employee does so take and subscribe to the form of oath or affirmation prescribed by this section.

C. Any officer or employee having taken the form of oath or affirmation prescribed by this section, and knowingly at the time of subscribing to the oath or affirmation, or at any time thereafter during the officer's or employee's term of office or employment, does commit or aid in the commission of any act to overthrow by force, violence or terrorism as defined in section 13-2301 the government of this state or of any of its political subdivisions, or advocates the overthrow by force, violence or terrorism as defined in section 13-2301 of the government of this state or of any of its political subdivisions, is guilty of a class 4 felony and, on conviction under this section, the officer or employee is deemed discharged from the office or employment and is not entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to the office or employment.

D. Any of the persons referred to in article XVIII, section 10, Constitution of Arizona, as amended, relating to the employment of aliens, are exempted from any compliance with this section.

E. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of the office or employment, the officer or employee shall take and subscribe the following oath or affirmation:

F. For the purposes of this section, "officer or employee" means any person elected, appointed or employed, either on a part-time or full-time basis, by this state or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution or any board, commission or agency of any county, city, town, municipal corporation, school district or public educational institution.

A.R.S. §38-231 (E) Oath.

State of Arizona, County of Pinal

I, Douglas J. Walker do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Assessor according to the best of my ability, so help me God (or so I do affirm)

A.R.S. §11-542 County Assessor, Oath

"I do solemnly swear (or affirm) that I will well and truly discharge the duties of Assessor of the County of Pinal, and will, to the best of my knowledge and ability, truly and fairly determine the valuation, without favor or partiality, of all the taxable property in said county at its full cash value"

Signature

Subscribed and sworn to before me on this 3rd day of December, 2012.

(SEAL)



№ 2021-016195 MISC Page: 639 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER

When recorded mail to:
Pinal County Human Resources

DATE/TIME: 01/03/2013 1013
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2013-000386



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Oath of Office

DOCUMENT TITLE

638

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Form RE-49

2021-016195 MISC Page: 640 of 774
12/02/2021 10:19:01 AM Receipt #: 21-13425
Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder



When Recorded Return To:
Pinal County Clerk of the Board
PO Box 827
Florence, AZ

LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

A.R.S. §38-231

I Douglas Wolf do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of Pinal County Assessor according to the best of my ability, so help me God (or so I do affirm).

A.R.S. §11-542

I do solemnly swear (or affirm) that I will well and truly discharge the duties of Pinal County Assessor, and will, to the best of my knowledge and ability, truly and fairly determine the valuation, without favor or partiality, of all the taxable property in said county at its full cash value."

(signature of officer or employee)

12/12/16
(date of signing)

639
State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 12 day of December, 2016.

(seal)

Stephanie I. Maack
Notary Public



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**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

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LOYALTY OATH OF OFFICE

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LOYALTY OATH OF OFFICE

State of Arizona)
County of Pinal)

I **Douglas Wolf** do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of **Pinal County Assessor** according to the best of my ability, so help me God (or so I do affirm).

I do solemnly swear (or affirm) that I will well and truly discharge the duties of **Pinal County Assessor**, and will, to the best of my knowledge and ability, truly and fairly determine the valuation, without favor or partiality, of all the taxable property in said county at its full cash value.

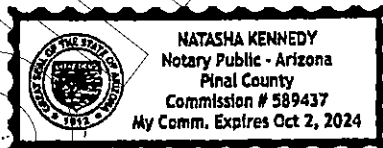
(Signature of officer or employee)

12-21-2020
(Date of signing)

State of Arizona)
County of Pinal)

Subscribed and sworn (or affirmed) before me this 21 day of December, 2020

(SEAL)



(Signature)
Notary Public





OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

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LOYALTY OATH OF OFFICE

Douglas Wolf
Pinal County Government
Assessor

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Proof-of-Claim – G. 4 / 7

:Arizona-Revised-Statute- proofs:
ARS Title 1 – General Provisions

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1-201. Adoption of common law; exceptions

The common law only so far as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people thereof, and not repugnant to or inconsistent with the Constitution of the United States or the constitution or laws of this state, or established customs of the people of this state, is adopted and shall be the rule of decision in all courts of this state.

1-215. Definitions

In the statutes and laws of this state, unless the context otherwise requires:

1. "Action" includes any matter or proceeding in a court, civil or criminal.
2. "Adopted rule" means a final rule as defined in section 41-1001.
3. "Adult" means a person who has attained eighteen years of age.
4. "Alternative fuel" means:
 - (a) Electricity.
 - (b) Solar energy.
 - (c) Liquefied petroleum gas, natural gas, hydrogen or a blend of hydrogen with liquefied petroleum or natural gas that complies with any of the following:
 - (i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.
 - (ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.
 - (iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.
 - (d) Only for vehicles that use alcohol fuels before August 21, 1998, alcohol fuels that contain not less than eighty-five percent alcohol by volume.
 - (e) A combination of at least seventy percent alternative fuel and not more than thirty percent petroleum based fuel that operates in an engine that meets the United

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States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94 and that is certified by the engine manufacturer to consume at least seventy percent alternative fuel during normal vehicle operations.

5. "Bribe" means anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in that person's action, vote or opinion, in any public or official capacity.

6. "Child" or "children" as used in reference to age of persons means persons under eighteen years of age.

7. "Clean burning fuel" means:

(a) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty percent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.

(b) A diesel fuel substitute that is produced from nonpetroleum renewable resources if the qualifying volume of the nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California Code of Regulations sections 2281 and 2282 in effect on January 1, 2000, the diesel fuel substitute meets the registration requirement for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01 and the use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

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(c) A diesel fuel that complies with all of the following:

(i) Contains a maximum of fifteen parts per million by weight of sulfur.

(ii) Meets ASTM D975.

(iii) Meets the registration requirements for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.

(iv) Is used in an engine that is equipped or has been retrofitted with a device that has been certified by the California air resources board diesel emission control strategy verification procedure, the United States environmental protection agency voluntary diesel retrofit program or the United States environmental protection agency verification protocol for retrofit catalyst, particulate filter and engine modification control technologies for highway and nonroad use diesel engines.

(d) A blend of unleaded gasoline that contains at minimum eighty-five percent ethanol by volume or eighty-five percent methanol by volume.

(e) Neat methanol.

(f) Neat ethanol.

8. "Corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

9. "Daytime" means the period between sunrise and sunset.

10. "Depose" includes every manner of written statement under oath or affirmation.

11. "Federal poverty guidelines" means the poverty guidelines as updated annually in the federal register by the United States department of health and human services.

12. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.

13. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.

14. "Includes" or "including" means not limited to and is not a term of exclusion.

15. "Inhabitant" means a resident of a city, town, village, district, county or precinct.

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16. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.

17. "Knowingly":

(a) Means only a knowledge that the facts exist that bring the act or omission within the provisions of the statute using such word.

(b) Does not require any knowledge of the unlawfulness of the act or omission.

18. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and justices of the supreme court, judges of the superior court, judges of the court of appeals, justices of the peace and judges of a municipal court.

19. "Majority" or "age of majority" as used in reference to the age of persons means eighteen years of age or more.

20. "Malice" and "maliciously" mean a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

21. "Minor" means a person under eighteen years of age.

22. "Minor children" means persons under eighteen years of age.

23. "Month" means a calendar month unless otherwise expressed.

24. "Moral turpitude" means an offense, whether a misdemeanor or felony, that is related to extortion, burglary, larceny, bribery, embezzlement, robbery, racketeering, money laundering, forgery, fraud, murder, voluntary manslaughter or a sexual offense that requires the individual to register pursuant to section 13-3821.

25. "Neglect", "negligence", "negligent" and "negligently" import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

26. "Nighttime" means the period between sunset and sunrise.

27. "Oath" includes an affirmation or declaration.

28. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, personnel who are employed by the state department of corrections and the department of juvenile corrections and who have received a certificate from the

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Arizona peace officer standards and training board, peace officers who are appointed by a multicounty water conservation district and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by community college district governing boards and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the Arizona board of regents and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the governing body of a public airport pursuant to section 28-8426 and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a private postsecondary institution pursuant to section 15-1897 and who have received a certificate from the Arizona peace officer standards and training board and special agents from the office of the attorney general, or of a county attorney, and who have received a certificate from the Arizona peace officer standards and training board.

29. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes a corporation, a partnership or any association of persons.

30. "Personal property" includes money, goods, chattels, things in action and evidences of debt.

31. "Population" means the population according to the most recent United States decennial census.

32. "Process" means a citation, writ or summons issued in the course of judicial proceedings.

33. "Property" includes both real and personal property.

34. "Real property" is coextensive with lands, tenements and hereditaments.

35. "Registered mail" includes certified mail.

36. "Seal" as used in reference to a paper issuing from a court or public office to which the seal of such court or office is required to be affixed means an impression of the seal on that paper, an impression of the seal affixed to that paper by a wafer

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or wax, a stamped seal, a printed seal, a screened seal or a computer generated seal.

37. "Signature" or "subscription" includes a mark, if a person cannot write, with the person's name written near it and witnessed by a person who writes the person's own name as witness.

38. "State", as applied to the different parts of the United States, includes the District of Columbia, this state and the territories.

39. "Testify" includes every manner of oral statement under oath or affirmation.

40. "United States" includes the District of Columbia and the territories.

41. "Vessel", as used in reference to shipping, includes ships of all kinds, steamboats, steamships, barges, canal boats and every structure adapted to navigation from place to place for the transportation of persons or property.

42. "Wilfully" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists.

43. "Will" includes codicils.

44. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.

45. "Writ" means an order or precept in writing issued in the name of the state or by a court or judicial officer.

46. "Writing" includes printing.

1-253. Effect of penal laws on civil remedies, forfeitures, military laws and contempts

A. The omission to specify or affirm by law liability to damages, penalty, forfeiture or other remedy imposed by law and allowed to be recovered or enforced in a civil action or proceeding for an act or omission declared punishable by law, does not affect a right to recover or enforce such liability.

B. The omission to specify or affirm by law any ground of forfeiture of a public office, or other trust, or special authority conferred by law, or to impeach, remove, depose or suspend a public officer or other person holding a trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment,



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removal, deposition or suspension.

C. Laws defining and punishing criminal offenses do not affect any power conferred by law upon courts martial, or other military authority or officer, to impose or inflict punishment upon offenders against military law, nor any power conferred by law to impose or inflict punishment for a contempt.

1-271. Sovereign authority; affordable care act; definition

A. Pursuant to the sovereign authority of this state and article II, section 3, Constitution of Arizona, this state and all political subdivisions of this state are prohibited from using any personnel or financial resources to enforce, administer or cooperate with the affordable care act by:

1. Funding or implementing a state-based health care exchange or marketplace.
2. Limiting the availability of self-funded health insurance programs or the reinsurance or other products that are traditionally used with self-funded health insurance programs.
3. Funding or aiding in the prosecution of any entity for a violation of the act, except as necessary to maintain the program integrity of the Arizona health care cost containment system.
4. Funding or administering any program or provision of the act except for regulatory activities that:
 - (a) Are associated with section 20-238 and title 20, chapter 2, article 3.4.
 - (b) Are administered under sections 36-2901.08 and 36-2901.09.
 - (c) Involve the Arizona health care cost containment system.
 - (d) Are associated with initiatives, grants or other funding related to public health treatment, preparedness, education or prevention programs authorized by the affordable care act, provided that the funding does not impose unrelated requirements on this state or its political subdivisions that are outside the scope of the specific program.

B. This state and all political subdivisions of this state may use personnel or financial resources to provide employee health insurance benefits, and such employee health insurance benefits may be in compliance with all provisions of the act.

C. For the purposes of this section, "act" or "affordable care act" means the patient



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protection and affordable care act (P.L. 111-148) as amended by the health care and education reconciliation act of 2010 (P.L. 111-152) and any rules adopted pursuant to those acts.

1-272. Sovereign authority; right of the people to keep and bear arms

Pursuant to the sovereign authority of this state and article II, section 3, Constitution of Arizona, this state and all political subdivisions of this state are prohibited from using any personnel or financial resources to enforce, administer or cooperate with any act, law, treaty, order, rule or regulation of the United States government that is inconsistent with any law of this state regarding the regulation of firearms.

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ARS Title 41 – State Government provisions

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- 1-216. 1-216. Joint authority of public officers; quorum of board or commission
- A. Words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving the authority to a majority of the officers or persons unless it is otherwise expressly declared in the law giving the authority.
- B. A majority of a board or commission shall constitute a quorum.

- 41-121. 41-121. Duties
- A. The secretary of state shall:
1. Receive bills and resolutions from the legislature, and perform such other duties as devolve on the secretary of state by resolution of the two houses or either of them.
 2. Keep a register of and attest the official acts of the governor.
 3. Act as custodian of the great seal of this state.
 4. Affix the great seal, with the secretary of state's attestation, to public instruments to which the official signature of the governor is attached.
 5. File in the secretary of state's office receipts for all books distributed by the secretary of state and direct the county recorder of each county to do the same.
 6. Certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor.
 7. Promptly chapter slip laws filed by the legislature, electronically publish and maintain the bills, memorials and resolutions posted on the secretary of state's website, make such acts available for a reasonable fee to include the cost of printing and postage, provide each house of the legislature and the legislative council with a certified copy of each chaptered bill or resolution and transfer to the custody of the Arizona state library, archives and public records all original paper copies filed.
 8. Keep a fee book of fees and compensation of whatever kind and nature

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earned, collected or charged by the secretary of state, with the date, the name of the payer and the nature of the service in each case. The fee book shall be verified annually by the secretary of state's affidavit entered in the fee book.

9. Perform other duties imposed on the secretary of state by law.

10. Report to the governor on January 2 each year, and at such other times as provided by law, a detailed account of the secretary of state's official actions taken since the secretary of state's previous report together with a detailed statement of the manner in which all appropriations for the secretary of state's office have been expended.

11. Transfer all noncurrent or inactive books, records, deeds and other papers otherwise required to be filed with or retained by the secretary of state to the custody of the Arizona state library, archives and public records.

12. Accept electronic and digital signatures that comply with section 18-106 for documents filed with and by all state agencies, boards and commissions.

13. Meet at least annually with personnel from the federal voting assistance office of the United States department of defense and with county recorders and other county election officials in this state to coordinate the delivery and return of registrations, ballot requests, voted ballots and other election materials to and from absent uniformed and overseas citizens.

B. The secretary of state may refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for an unlawful, illegitimate, false or fraudulent purpose or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity. This subsection does not apply to election filings.

41-151.11. Access to public records

The director, in person or through a deputy, has the right of reasonable access to all nonconfidential public records in this state, or any public office of this state or any county, city, district or political subdivision of this state, because of the historical and research value of data contained in those records, with a view to securing their safety and determining their need for



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preservation or disposal.

41-621. 41-621. Purchase of insurance; coverage; limitations; exclusions; definitions

A. The department of administration shall obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection F of this section, on the following:

1. All state-owned buildings, including those of the universities, excluding buildings of community colleges, whether financed in whole or in part by state monies or buildings in which the state has an insurable interest as determined by the department of administration.
2. Contents in any buildings owned, leased or rented, in whole or in part, by or to this state, excluding buildings of community colleges, and reported to the department of administration.
3. This state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as may be necessary to accomplish the functions or business of the state and its departments, agencies, boards and commissions against liability for acts or omissions of any nature while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization except as prescribed by this chapter.
4. All personal property reported to the department of administration, including vehicles and aircraft owned by the state and its departments, agencies, boards and commissions and all nonowned personal property that is under the clear responsibility of this state because of written leases or other written agreements.
5. This state and its departments, agencies, boards and commissions against casualty, use and occupancy and liability losses of every nature except as prescribed by this chapter.
6. Workers' compensation and employers' liability insurance.
7. Design and construction of buildings, roads, environmental remediations and other construction projects.



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8. Other exposures to loss where insurance may be required to protect this state and its departments, agencies, boards and commissions and all officers, agents and employees acting in the course and scope of employment or authorization except as prescribed by this chapter.

B. To the extent it is determined necessary and in the best interests of this state, the department of administration shall obtain insurance or provide for state self-insurance against property damage caused by clients and liability coverage resulting from the direct or incidental care of clients participating in programs of this state and its departments, agencies, boards or commissions relating to custodial care. The insurable programs shall include foster care, programs for persons with developmental disabilities, an independent living program pursuant to section 8-521 and respite-sitter service programs. The department shall obtain insurance or provide for state self-insurance pursuant to this subsection to protect the clients participating in these programs and individual providers of these program services on behalf of this state and its departments, agencies, boards or commissions. The insurance provided under this subsection does not include medical or workers' compensation coverage for providers. The department may include in its annual budget request pursuant to section 41-622, subsection D a charge for the insurance or self-insurance provided in this subsection. To assist in carrying out this subsection, the department shall establish a seven-member advisory board in accordance with the following provisions:

1. The board shall consist of three members appointed by the director of the department of administration, at least one of whom shall be a foster parent, one member appointed by the director of the department of economic security, one member appointed by the director of the department of child safety, one member appointed by the director of the state department of corrections, and one member appointed by the administrative director of the courts.
2. The board shall elect a chairman from among its members.
3. The board shall hold at least two meetings a year or shall meet at the call of the chairman.



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4. Board members shall serve for three-year terms.

5. Board members are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

6. The board shall provide advice to the department regarding coverage and administration of this subsection and shall assist the department in coordinating its activities pursuant to this subsection with state departments, agencies, boards and commissions.

C. The department of administration may obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection F of this section for the professional liability of individual physicians and psychiatrists who provide services under a contract with the state department of corrections. Coverage is limited to acts and omissions committed inside a state department of corrections facility while in the performance of the contract and to individual physicians and psychiatrists who demonstrate to the satisfaction of the state department of corrections that they cannot otherwise obtain professional liability coverage for the services required by the contract. The director of the department of administration may impose on the state department of corrections a deductible for each loss that arises out of a professional liability claim pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

D. The department of administration may obtain property, liability, disability or workers' compensation insurance, self-insure or develop risk retention pools to provide for payment of property loss or casualty claims or disability insurance claims against contractors of this state with the approval of the joint legislative budget committee. With respect to insurance, self-insurance or risk retention pools for contractors licensed and contracted to do work for this state, the coverage afforded applies with respect to the conduct of the business entity of that contractor. The pool is available to all contractors regardless of the amount that the state-contracted work bears in relation to the amount of nonstate contracted work. The contractor shall be terminated from the pool if the contractor ceases to be a state contractor.



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E. The department of administration may determine, in the best interests of this state, that state self-insurance is necessary or desirable and, if that decision is made, shall provide for state self-insurance for losses arising out of state property, liability or workers' compensation claims prescribed by subsection A of this section. If the department of administration provides state self-insurance, such coverage shall be excess over any other valid and collectible insurance. The director of the department of administration may impose on state departments, agencies, boards and commissions a deductible for each loss that arises out of a property, liability or workers' compensation loss pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

F. In carrying out this chapter, the department of administration shall establish and provide the state with some or all of the necessary risk management services, or shall contract for risk management services pursuant to chapter 23 of this title, as the director of the department of administration deems necessary in the best interest of the state, and in addition to other specifications of such coverage as deemed necessary, may determine self-insurance to be established. Chapter 23 of this title does not apply to the department of administration's procurement of insurance to cover losses arising out of state property or liability claims prescribed in subsections A and D of this section or excess loss insurance for the state's workers' compensation liability for individual or aggregate claims, or both, in such amounts and at such primary retention levels as the department of administration deems in the best interest of this state. In purchasing insurance to cover losses arising out of state property or liability claims prescribed by subsection A of this section, the department of administration is not subject to title 20, chapter 2, article 5.

G. A successful bidder for risk management services pursuant to this section is not entitled to receive directly or indirectly any sales commission, contingent commission, excess profit commission, or other commissions, or anything of value, as payment for the risk management services except those amounts received directly from this state as payment for the risk management services.



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H. The department of administration shall pay for purchased risk management services, premiums for insurance on state property and state liability and workers' compensation pursuant to this chapter.

I. A state officer, agent or employee acting in good faith, without wanton disregard of statutory duties and under the authority of an enactment that is subsequently declared to be unconstitutional, invalid or inapplicable, is not personally liable for an injury or damage caused thereby except to the extent that the officer, agent or employee would have been personally liable had the enactment been constitutional, valid and applicable.

J. A state officer, agent or employee, except as otherwise provided by statute, is not personally liable for an injury or damage resulting from an act or omission in a public official capacity where the act or omission was the result of the exercise of the discretion vested in the officer, agent or employee and if the exercise of the discretion was done in good faith without wanton disregard of statutory duties.

K. This state and its departments, agencies, boards and commissions are immune from liability for losses arising out of a judgment for wilful and wanton conduct resulting in punitive or exemplary damages.

L. The following exclusions shall apply to subsections A, B and E of this section:

1. Losses against this state and its departments, agencies, boards and commissions that arise out of and are directly attributable to an act or omission determined by a court to be a felony by a person who is provided coverage pursuant to this article unless the state knew of the person's propensity for that action, except those acts arising out of the operation or use of a motor vehicle.

2. Losses arising out of contractual breaches.

M. If self-insurance coverage is determined to exist, the attorney general, with funds provided by the department of administration, shall provide for the defense, either through the attorney general's office or by appointment of outside legal counsel, of this state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others



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as are insured by the department of administration for or on account of their acts or omissions covered pursuant to this chapter. All state departments, agencies, boards and commissions, all officers, agents and employees thereof and such others as are insured by the department of administration shall cooperate fully with the attorney general and department of administration in the defense of claims arising pursuant to this chapter.

N. A claim for liability damages made pursuant to this chapter may be settled and payment made up to the amount of \$25,000 or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration. A claim over the amount of \$25,000 up to \$50,000 or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration and the attorney general. Any claim over the amount of \$50,000 or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration, the attorney general and the joint legislative budget committee. If it is in the best interest of this state, the joint legislative budget committee may establish higher settlement limits. Any settlements involving amounts in excess of \$50,000 or such higher limit as may be established by the joint legislative budget committee shall be approved by the department of administration, the attorney general and the joint legislative budget committee pursuant to the authority granted.

The settlement of liability claims shall be solely the authority of the department of administration, the attorney general and the joint legislative budget committee. No state department, agency, board or commission or any officer, agent or employee of this state may voluntarily make any payment, assume any obligation, incur any expense or maintain the individual right of consent for liability claims made pursuant to this chapter except as provided by this section.

O. Neither the authority provided by this section to insure, nor the exercise of such authority, shall:

1. Impose any liability on this state or the departments, agencies, boards and



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commissions or any officers, agents and employees of this state unless such liability otherwise exists.

2. Impair any defense this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state otherwise may have.

P. The department of administration shall pay, on behalf of any state officer, agent or employee, any damages, excluding punitive damages, for which the officer, agent or employee becomes legally responsible if the acts or omissions resulting in liability were within the officer's, agent's or employee's course and scope of employment. The department of administration may pay for all damages however designated that the officer, agent or employee becomes legally responsible for if the acts or omissions resulting in liability are determined by the director of the department of administration to be within the person's course and scope of employment.

Q. The department of administration shall adopt such rules as are deemed necessary to carry out, implement and limit this chapter.

R. For the purposes of determining whether a state officer, agent or employee is entitled to coverage under this chapter, "within the course and scope of employment or authorization" means:

1. The acts or omissions that the state officer, agent or employee is employed or authorized to perform.
2. The acts or omissions of the state officer, agent or employee occur substantially within the authorized time and space limit.
3. The acts or omissions are activated at least in part by a purpose to serve this state or its departments, agencies, boards or commissions.

S. To the extent it is determined necessary and in the best interest of this state, the department of administration may obtain design and construction insurance or provide for self-insurance against property damage caused by this state, its departments, agencies, boards and commissions and all officers and employees of this state in connection with the construction of public works projects. Workers' compensation liability insurance may be

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purchased to cover both general contractors and subcontractors doing work on a specific contracted worksite. The department may include in its annual budget request, pursuant to section 41-622, subsection D, the cost of the insurance purchased or provided. In connection with the construction of public works projects, the department of administration may also use an owner-controlled or wrap-up insurance program if all of the following conditions are met:

1. The total cost of the project is over \$50,000,000.
2. The program maintains completed operations coverage for a term during which coverage is reasonably commercially available as determined by the director of the department of insurance and financial institutions, but in no event for less than three years.
3. Bid specifications clearly specify for all bidders the insurance coverage provided under the program and the minimum safety requirements that shall be met.
4. The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor believes is necessary for protection from any liability arising out of the contract. The cost of the additional insurance shall not be passed through to this state on a contract bid.
5. The program does not include surety insurance.
- T. The state may purchase an owner-controlled or wrap-up policy that has a deductible or self-insured retention as long as the deductible or self-insured retention does not exceed \$1,000,000.

U. For the purposes of subsections S and T of this section:

1. "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover this state and all of the contractors, subcontractors, architects and engineers on a specified contracted worksite for purposes of general liability, property damage and workers' compensation.
2. "Specific contracted worksite" means construction being performed at one site or a series of contiguous sites separated only by a street, roadway,



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waterway or railroad right-of-way, or along a continuous system for the provision of water and power.

V. Notwithstanding any other statute the department of administration may:

1. Limit the liability of a person who contracts to provide goods, software or other services to this state.
2. Allow the person to disclaim incidental or consequential damages.
3. Indemnify or hold harmless any party to the contract.

41-621. Purchase of insurance; coverage; limitations; exclusions; definitions

A. The department of administration shall obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection F of this section, on the following:

1. All state-owned buildings, including those of the universities, excluding buildings of community colleges, whether financed in whole or in part by state monies or buildings in which the state has an insurable interest as determined by the department of administration.
2. Contents in any buildings owned, leased or rented, in whole or in part, by or to this state, excluding buildings of community colleges, and reported to the department of administration.
3. This state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as may be necessary to accomplish the functions or business of the state and its departments, agencies, boards and commissions against liability for acts or omissions of any nature while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization except as prescribed by this chapter.
4. All personal property reported to the department of administration, including vehicles and aircraft owned by the state and its departments, agencies, boards and commissions and all nonowned personal property that is under the clear responsibility of this state because of written leases or other written agreements.



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5. This state and its departments, agencies, boards and commissions against casualty, use and occupancy and liability losses of every nature except as prescribed by this chapter.

6. Workers' compensation and employers' liability insurance.

7. Design and construction of buildings, roads, environmental remediations and other construction projects.

8. Other exposures to loss where insurance may be required to protect this state and its departments, agencies, boards and commissions and all officers, agents and employees acting in the course and scope of employment or authorization except as prescribed by this chapter.

B. To the extent it is determined necessary and in the best interests of this state, the department of administration shall obtain insurance or provide for state self-insurance against property damage caused by clients and liability coverage resulting from the direct or incidental care of clients participating in programs of this state and its departments, agencies, boards or commissions relating to custodial care. The insurable programs shall include foster care, programs for persons with developmental disabilities, an independent living program pursuant to section 8-521 and respite-sitter service programs. The department shall obtain insurance or provide for state self-insurance pursuant to this subsection to protect the clients participating in these programs and individual providers of these program services on behalf of this state and its departments, agencies, boards or commissions. The insurance provided under this subsection does not include medical or workers' compensation coverage for providers. The department may include in its annual budget request pursuant to section 41-622, subsection D a charge for the insurance or self-insurance provided in this subsection. To assist in carrying out this subsection, the department shall establish a seven-member advisory board in accordance with the following provisions:

1. The board shall consist of three members appointed by the director of the department of administration, at least one of whom shall be a foster parent, one member appointed by the director of the department of economic security, one member appointed by the director of the department of child safety, one member appointed by the director of the state department of



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corrections, and one member appointed by the administrative director of the courts.

2. The board shall elect a chairman from among its members.

3. The board shall hold at least two meetings a year or shall meet at the call of the chairman.

4. Board members shall serve for three-year terms.

5. Board members are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

6. The board shall provide advice to the department regarding coverage and administration of this subsection and shall assist the department in coordinating its activities pursuant to this subsection with state departments, agencies, boards and commissions.

C. The department of administration may obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection F of this section for the professional liability of individual physicians and psychiatrists who provide services under a contract with the state department of corrections. Coverage is limited to acts and omissions committed inside a state department of corrections facility while in the performance of the contract and to individual physicians and psychiatrists who demonstrate to the satisfaction of the state department of corrections that they cannot otherwise obtain professional liability coverage for the services required by the contract. The director of the department of administration may impose on the state department of corrections a deductible for each loss that arises out of a professional liability claim pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

D. The department of administration may obtain property, liability, disability or workers' compensation insurance, self-insure or develop risk retention pools to provide for payment of property loss or casualty claims or disability insurance claims against contractors of this state with the approval of the joint legislative budget committee. With respect to insurance, self-insurance



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or risk retention pools for contractors licensed and contracted to do work for this state, the coverage afforded applies with respect to the conduct of the business entity of that contractor. The pool is available to all contractors regardless of the amount that the state-contracted work bears in relation to the amount of nonstate contracted work. The contractor shall be terminated from the pool if the contractor ceases to be a state contractor.

E. The department of administration may determine, in the best interests of this state, that state self-insurance is necessary or desirable and, if that decision is made, shall provide for state self-insurance for losses arising out of state property, liability or workers' compensation claims prescribed by subsection A of this section. If the department of administration provides state self-insurance, such coverage shall be excess over any other valid and collectible insurance. The director of the department of administration may impose on state departments, agencies, boards and commissions a deductible for each loss that arises out of a property, liability or workers' compensation loss pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

F. In carrying out this chapter, the department of administration shall establish and provide the state with some or all of the necessary risk management services, or shall contract for risk management services pursuant to chapter 23 of this title, as the director of the department of administration deems necessary in the best interest of the state, and in addition to other specifications of such coverage as deemed necessary, may determine self-insurance to be established. Chapter 23 of this title does not apply to the department of administration's procurement of insurance to cover losses arising out of state property or liability claims prescribed in subsections A and D of this section or excess loss insurance for the state's workers' compensation liability for individual or aggregate claims, or both, in such amounts and at such primary retention levels as the department of administration deems in the best interest of this state. In purchasing insurance to cover losses arising out of state property or liability claims prescribed by subsection A of this section, the department of administration is not subject to title 20, chapter 2, article 5.



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G. A successful bidder for risk management services pursuant to this section is not entitled to receive directly or indirectly any sales commission, contingent commission, excess profit commission, or other commissions, or anything of value, as payment for the risk management services except those amounts received directly from this state as payment for the risk management services.

H. The department of administration shall pay for purchased risk management services, premiums for insurance on state property and state liability and workers' compensation pursuant to this chapter.

I. A state officer, agent or employee acting in good faith, without wanton disregard of statutory duties and under the authority of an enactment that is subsequently declared to be unconstitutional, invalid or inapplicable, is not personally liable for an injury or damage caused thereby except to the extent that the officer, agent or employee would have been personally liable had the enactment been constitutional, valid and applicable.

J. A state officer, agent or employee, except as otherwise provided by statute, is not personally liable for an injury or damage resulting from an act or omission in a public official capacity where the act or omission was the result of the exercise of the discretion vested in the officer, agent or employee and if the exercise of the discretion was done in good faith without wanton disregard of statutory duties.

K. This state and its departments, agencies, boards and commissions are immune from liability for losses arising out of a judgment for wilful and wanton conduct resulting in punitive or exemplary damages.

L. The following exclusions shall apply to subsections A, B and E of this section:

1. Losses against this state and its departments, agencies, boards and commissions that arise out of and are directly attributable to an act or omission determined by a court to be a felony by a person who is provided coverage pursuant to this article unless the state knew of the person's propensity for that action, except those acts arising out of the operation or use of a motor vehicle.



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2. Losses arising out of contractual breaches.

M. If self-insurance coverage is determined to exist, the attorney general, with funds provided by the department of administration, shall provide for the defense, either through the attorney general's office or by appointment of outside legal counsel, of this state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as are insured by the department of administration for or on account of their acts or omissions covered pursuant to this chapter. All state departments, agencies, boards and commissions, all officers, agents and employees thereof and such others as are insured by the department of administration shall cooperate fully with the attorney general and department of administration in the defense of claims arising pursuant to this chapter.

N. A claim for liability damages made pursuant to this chapter may be settled and payment made up to the amount of \$25,000 or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration. A claim over the amount of \$25,000 up to \$50,000 or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration and the attorney general. Any claim over the amount of \$50,000 or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration, the attorney general and the joint legislative budget committee. If it is in the best interest of this state, the joint legislative budget committee may establish higher settlement limits. Any settlements involving amounts in excess of \$50,000 or such higher limit as may be established by the joint legislative budget committee shall be approved by the department of administration, the attorney general and the joint legislative budget committee pursuant to the authority granted.

The settlement of liability claims shall be solely the authority of the department of administration, the attorney general and the joint legislative budget committee. No state department, agency, board or commission or any officer, agent or employee of this state may voluntarily make any payment, assume any obligation, incur any expense or maintain the



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individual right of consent for liability claims made pursuant to this chapter except as provided by this section.

O. Neither the authority provided by this section to insure, nor the exercise of such authority, shall:

1. Impose any liability on this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state unless such liability otherwise exists.

2. Impair any defense this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state otherwise may have.

P. The department of administration shall pay, on behalf of any state officer, agent or employee, any damages, excluding punitive damages, for which the officer, agent or employee becomes legally responsible if the acts or omissions resulting in liability were within the officer's, agent's or employee's course and scope of employment. The department of administration may pay for all damages however designated that the officer, agent or employee becomes legally responsible for if the acts or omissions resulting in liability are determined by the director of the department of administration to be within the person's course and scope of employment.

Q. The department of administration shall adopt such rules as are deemed necessary to carry out, implement and limit this chapter.

R. For the purposes of determining whether a state officer, agent or employee is entitled to coverage under this chapter, "within the course and scope of employment or authorization" means:

1. The acts or omissions that the state officer, agent or employee is employed or authorized to perform.

2. The acts or omissions of the state officer, agent or employee occur substantially within the authorized time and space limit.

3. The acts or omissions are activated at least in part by a purpose to serve this state or its departments, agencies, boards or commissions.



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S. To the extent it is determined necessary and in the best interest of this state, the department of administration may obtain design and construction insurance or provide for self-insurance against property damage caused by this state, its departments, agencies, boards and commissions and all officers and employees of this state in connection with the construction of public works projects. Workers' compensation liability insurance may be purchased to cover both general contractors and subcontractors doing work on a specific contracted worksite. The department may include in its annual budget request, pursuant to section 41-622, subsection D, the cost of the insurance purchased or provided. In connection with the construction of public works projects, the department of administration may also use an owner-controlled or wrap-up insurance program if all of the following conditions are met:

1. The total cost of the project is over \$50,000,000.
 2. The program maintains completed operations coverage for a term during which coverage is reasonably commercially available as determined by the director of the department of insurance and financial institutions, but in no event for less than three years.
 3. Bid specifications clearly specify for all bidders the insurance coverage provided under the program and the minimum safety requirements that shall be met.
 4. The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor believes is necessary for protection from any liability arising out of the contract. The cost of the additional insurance shall not be passed through to this state on a contract bid.
 5. The program does not include surety insurance.
- T. The state may purchase an owner-controlled or wrap-up policy that has a deductible or self-insured retention as long as the deductible or self-insured retention does not exceed \$1,000,000.

U. For the purposes of subsections S and T of this section:

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1. "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover this state and all of the contractors, subcontractors, architects and engineers on a specified contracted worksite for purposes of general liability, property damage and workers' compensation.

2. "Specific contracted worksite" means construction being performed at one site or a series of contiguous sites separated only by a street, roadway, waterway or railroad right-of-way, or along a continuous system for the provision of water and power.

V. Notwithstanding any other statute the department of administration may:

1. Limit the liability of a person who contracts to provide goods, software or other services to this state.
2. Allow the person to disclaim incidental or consequential damages.
3. Indemnify or hold harmless any party to the contract.

41-621.01. 41-621.01. Contractors or subcontractors; pooling of property, liability and workers' compensation coverage; exemptions; board of trustees; contract; termination; audit; insolvency

A. Pursuant to section 41-621, subsection D and section 41-622.01 two or more contractors or subcontractors licensed to do work for this state or any political subdivision of this state may with the approval of the department of administration enter into contracts or agreements pursuant to this section for the joint purchase of insurance, to pool retention of their risks for property and liability losses and to provide for the payment of the property loss or claim of liability made against any member of the pool on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party, if the department of administration has determined to sanction such a pool. Two or more contractors may also enter into contracts or agreements pursuant to this section to establish a workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 on a cooperative or contract basis with one another or may jointly form a

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nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party. A workers' compensation pool established pursuant to this subsection may provide coverage for workers' compensation, employers' liability and occupational disease claims. A workers' compensation pool is subject to approval as a self-insurer by the industrial commission of Arizona pursuant to section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and rules adopted pursuant to that chapter in addition to the requirements of this section. The industrial commission of Arizona, by rule, resolution or order, may adopt requirements for the administration of a workers' compensation pool under this subsection, including separation or commingling of funds, accounting, auditing, reporting, actuarial standards and procedures.

B. In addition to other authority granted pursuant to this title, two or more contractors or subcontractors licensed to do work for this state or any political subdivision of this state may enter into contracts or agreements for the joint purchase of life insurance, disability insurance, accident insurance or health benefits plan insurance, to pool retention of their risks of loss for life, disability, health or accident claims made against any contractor or subcontractor member of the pool or to jointly provide the health and medical services authorized in section 36-2907. Contractors and subcontractors may establish pools for the purposes of this subsection by any of the following methods:

1. On a cooperative or contract basis.
2. By the formation of a nonprofit corporation.
3. By a contract or intergovernmental agreement with the Arizona health care cost containment system administration.
4. By the execution of a trust agreement directly by the contractors and subcontractors or by contracting with a third party.

C. Contractors or subcontractors of a political subdivision of this state that is a member of a risk retention pool authorized under title 11 may obtain life insurance, disability insurance, accident insurance or health benefits plan insurance coverage directly from that political subdivision if coverage is



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available and as authorized by section 11-952.01, subsection C.

D. Section 10-11301 does not apply to nonprofit corporations formed pursuant to this section.

E. Chapter 23 of this title does not apply to the procurement of insurance or to the procurement of the services provided for in subsection I, paragraph 8 of this section by any pool established pursuant to this section.

F. Title 43 does not apply to any pool established pursuant to this section. Any pool established pursuant to this section is exempt from taxation under title 43.

G. Each pool shall be operated by a board of trustees consisting of at least five members. The board of trustees of each group shall do all of the following:

1. Establish terms and conditions of coverage within the pool including exclusions of coverage.
2. Ensure that all claims are paid promptly.
3. Take all necessary precautions to safeguard the assets of the group.
4. Maintain minutes of its meetings.
5. Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the group and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
6. Notify the director of the department of insurance and financial institutions of the existence of the pool and file a copy of the agreement with the director and with the attorney general.
7. If the pool is a workers' compensation pool, file a copy of the agreement with the director of the industrial commission of Arizona.

H. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium except pursuant to payment plans established by the board.



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2. Borrow any monies from the group or in the name of the group except in the ordinary course of business.

I. A contract or agreement made pursuant to subsection A of this section shall contain the following:

1. A provision for a system or program of loss control.

2. A provision for termination of membership including either:

(a) Cancellation of individual members of the pool by the pool.

(b) Election by an individual member of the pool to terminate its participation.

3. A provision requiring the pool to pay all claims for which each member incurs liability during each member's period of membership.

4. A provision stating that each member is not relieved of its liability incurred during the member's period of membership except through the payment of losses by the pool or by the member.

5. A provision for the maintenance of claims reserves equal to known incurred losses and an estimate of incurred but not reported claims.

6. A provision for a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled or paid.

7. A provision that the pool may establish offices where necessary in this state and employ necessary staff to carry out the purposes of the pool.

8. A provision that the pool may retain legal counsel, actuaries, auditors, engineers, private consultants and advisors.

9. A provision that the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers.

10. A provision that the pool may purchase, lease or rent real and personal property it deems necessary.

11. A provision that the pool shall enter into a financial services agreement with banks and that it may issue checks in its own name.



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J. A pool or a terminating member shall provide at least ninety days' written notice of the termination or cancellation. A workers' compensation pool shall notify the industrial commission of Arizona of the termination or cancellation of a member thirty days before the termination or cancellation of the member.

K. The pool shall be audited annually at the expense of the pool by a certified public accountant, with a copy of the report submitted to the governing body or chief executive officer of each member of the pool and to the director of the department of insurance and financial institutions. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the claim reserves of the pool including an estimate of the incurred but not reported claims. The department of insurance and financial institutions shall examine each contractor pool once every five years. The director of the department of insurance and financial institutions may examine a contractor pool sooner than five years from the preceding examination if the director has reason to believe that the pool is insolvent. The costs of any examination shall be paid by the pool subject to the examination.

L. If, as a result of the annual audit or an examination by the director of the department of insurance and financial institutions, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the director of the department of insurance and financial institutions shall notify the administrator and the board of trustees of the pool of the deficiency and provide the director's list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within sixty days after the date of the notice, the director shall notify the chief executive officer or the governing bodies, if any, of the members of the pool, the governor, the president of the senate and the speaker of the house of representatives that the pool has failed to comply with the recommendations of the director.

M. If a pool is determined to be insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations, each agreement or contract shall provide that the members of the pool shall be assessed on a



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pro rata basis as calculated by the amount of each member's annual contribution in order to satisfy the amount of deficiency. The assessment shall not exceed the amount of each member's annual contribution to the pool.

N. If a workers' compensation pool fails to comply with title 23, chapter 6 or rules adopted pursuant to that chapter, the director of the industrial commission of Arizona shall immediately notify the director of the department of administration and the director of the department of insurance and financial institutions.

41-622. 41-622. Risk management revolving fund; construction insurance fund; self-insured losses and administrative costs; budget requests

A. A risk management revolving fund and a construction insurance fund are established in the department of administration for the purchase of insurance, risk management services including loss prevention services, payment of self-insured losses pursuant to section 41-621, subsections A, B, C, D and E and administrative costs necessary to carry out risk management services prescribed by section 41-621. The department of administration shall pay for claims processing costs, including adjusting costs, legal defense costs and attorney fees, for any portion of claims falling within state self-insurance coverage pursuant to the provisions of this chapter.

B. The risk management revolving fund in the department of administration shall exclude any property loss arising from damage due to mechanical or electrical breakdown, ordinary wear and tear or obsolescence, nonserviceability, mysterious disappearance or inventory shortage. Mysterious disappearance shall not be construed to include a loss if there is a reasonable presumption of theft. The department of administration, subject to chapter 23 of this title, may advance or disburse monies to contractors who rebuild state property as a result of self-insured losses or to persons who supply goods or services in replacing self-insured losses. The department of administration shall pay for claims processing costs, including adjusting costs, legal defense costs and attorney fees, for any portion of claims falling within state self-insurance coverage pursuant to the



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provisions of this chapter.

C. To qualify for payment for loss by theft or burglary of state-owned personal property, an agency, department, board or commission must show evidence of forcible entry or that threat of violence was used in the taking of the property or there must be a reasonable presumption of theft.

D. The department of administration shall present to the legislature not later than September 1 of each year, in accordance with the provisions of section 35-113, a budget request based on the actuarial needs for liability losses, workers' compensation liability losses, property losses and risk management administrative costs. The budget request shall be broken down to reflect the amount of monies to be charged to each of the state departments, agencies, boards and commissions and any others insured under this chapter. Any state department, agency, board or commission that has an amount for insurance included in its appropriation, whether specifically stated or not, and any state department, agency, board or commission or others insured under this chapter that receive funds other than those appropriated shall be billed for the proportionate share of the charges for insurance or self-insurance by the department of administration. In collecting the agency billings for risk management charges, the director of the department of administration may transfer the entire amount of the billing for appropriated insurance from the agency account into the fund designated in subsection A of this section at the start of the fiscal year or in periodic payments during the fiscal year if necessitated by cash flow restrictions. Those entities or persons insured under the provisions of this chapter that are not state agencies, departments, boards, commissions or employees or that do not receive funding from state sources shall pay annually the amount required by risk management to the risk management revolving fund or construction insurance fund before the coverage continues for existing claims or begins for new claims made. The construction insurance fund shall receive monies necessary to pay the cost of purchasing insurance, providing self-insurance or administering the fund as authorized by section 41-621, subsection S from each capital construction project budget at rates established by the department of administration and reviewed by the joint committee on capital review. These amounts shall be included in the budget request. All monies



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received from all billings shall be deposited in the funds as identified in subsection A of this section.

E. All monies recovered by the state pursuant to litigation, recovery, salvage value of damaged property, proportionate share monies from any other existing state funds, or otherwise, for damages relating to either a liability, property or workers' compensation loss for which monies from the risk management revolving fund or construction insurance fund have been or will be paid shall be deposited in the respective fund.

F. If a revolving fund is projected to be exhausted while the legislature is in session, a special appropriation may be requested by the department of administration for monies to meet the needs of the funds. If the funds are exhausted at a time when the legislature is not in session, any final judgment shall accrue interest and shall be payable upon appropriation in the next succeeding regular session of the legislature. Interest on any judgment against this state paid for out of the risk management revolving fund shall accrue at the average yield offered by United States treasury bills during the course of the appeal and shall be paid in accordance with this section. If the appeal is lost by this state, the judgment amount plus interest at the rate prescribed in this subsection shall be paid.

G. All monies deposited in the risk management revolving fund are subject to annual legislative appropriation to the department of administration for use pursuant to this section. Monies in the construction insurance fund are continuously appropriated for the fund purposes. The funds established by subsection A of this section are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

H. A ten thousand dollar death benefit shall be paid from the risk management revolving fund to the estate of a deceased volunteer, who is registered as a volunteer by the agency, board or commission, or to an employee who is not subject to the provisions of section 38-651.02, upon proof of death while in the course and scope of duties as prescribed in section 41-621, subsection P for any state agency, board or commission.

41-622.01. 41-622.01. Revolving fund for joint insurance purchase retention pools



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A. A permanent special risk revolving fund is established in the department of administration for the purpose of administering joint insurance purchase, self-insurance or pooled retention plans for contractors of this state prescribed by section 41-621, subsection C. The fund shall be administered pursuant to section 41-621.01. Except if otherwise provided by law, this state shall not appropriate any monies from its general fund in the administration of pools within the special risk revolving fund.

B. The monies in the revolving funds may be invested pursuant to section 35-313. Interest earnings on the revolving funds shall be credited to the respective pools within the revolving fund.

C. If the revolving fund is projected to be exhausted the board of trustees shall make a special assessment on all members of a respective pool for monies to meet the needs of the fund. If the monies in the fund are exhausted a final claim settlement of judgment shall accrue interest at the legal rate and is payable on receipt of allocated income from members of the pool.

D. All monies deposited in the funds identified in subsection A of this section are appropriated to the department of administration for use pursuant to this section and are exempt from section 35-190, relating to lapsing of appropriations.

41-622.02. 41-622.02. Consumer loss recovery fund

A. A consumer loss recovery fund is established in the department of administration consisting of monies transferred to the fund from the budget stabilization fund established by section 35-144. Monies in the fund shall pay for claims, adjusting costs, processing costs, legal defense costs and administrative costs as provided by law.

B. The department of administration shall file a monthly report by the twenty-fifth day of the next month with the governor, the president of the senate and the speaker of the house of representatives. The monthly report shall include, at a minimum, the number of claims settled, the dollar costs associated with claims and the operating monies spent in support of the



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program.

C. All monies recovered by the state pursuant to litigation of false claims shall be deposited in the state general fund.

D. Monies in the consumer loss recovery fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

41-622. 41-622. Risk management revolving fund; construction insurance fund; self-insured losses and administrative costs; budget requests

A. A risk management revolving fund and a construction insurance fund are established in the department of administration for the purchase of insurance, risk management services including loss prevention services, payment of self-insured losses pursuant to section 41-621, subsections A, B, C, D and E and administrative costs necessary to carry out risk management services prescribed by section 41-621. The department of administration shall pay for claims processing costs, including adjusting costs, legal defense costs and attorney fees, for any portion of claims falling within state self-insurance coverage pursuant to the provisions of this chapter.

B. The risk management revolving fund in the department of administration shall exclude any property loss arising from damage due to mechanical or electrical breakdown, ordinary wear and tear or obsolescence, nonserviceability, mysterious disappearance or inventory shortage. Mysterious disappearance shall not be construed to include a loss if there is a reasonable presumption of theft. The department of administration, subject to chapter 23 of this title, may advance or disburse monies to contractors who rebuild state property as a result of self-insured losses or to persons who supply goods or services in replacing self-insured losses. The department of administration shall pay for claims processing costs, including adjusting costs, legal defense costs and attorney fees, for any portion of claims falling within state self-insurance coverage pursuant to the provisions of this chapter.

C. To qualify for payment for loss by theft or burglary of state-owned personal property, an agency, department, board or commission must show



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evidence of forcible entry or that threat of violence was used in the taking of the property or there must be a reasonable presumption of theft.

D. The department of administration shall present to the legislature not later than September 1 of each year, in accordance with the provisions of section 35-113, a budget request based on the actuarial needs for liability losses, workers' compensation liability losses, property losses and risk management administrative costs. The budget request shall be broken down to reflect the amount of monies to be charged to each of the state departments, agencies, boards and commissions and any others insured under this chapter. Any state department, agency, board or commission that has an amount for insurance included in its appropriation, whether specifically stated or not, and any state department, agency, board or commission or others insured under this chapter that receive funds other than those appropriated shall be billed for the proportionate share of the charges for insurance or self-insurance by the department of administration. In collecting the agency billings for risk management charges, the director of the department of administration may transfer the entire amount of the billing for appropriated insurance from the agency account into the fund designated in subsection A of this section at the start of the fiscal year or in periodic payments during the fiscal year if necessitated by cash flow restrictions. Those entities or persons insured under the provisions of this chapter that are not state agencies, departments, boards, commissions or employees or that do not receive funding from state sources shall pay annually the amount required by risk management to the risk management revolving fund or construction insurance fund before the coverage continues for existing claims or begins for new claims made. The construction insurance fund shall receive monies necessary to pay the cost of purchasing insurance, providing self-insurance or administering the fund as authorized by section 41-621, subsection S from each capital construction project budget at rates established by the department of administration and reviewed by the joint committee on capital review. These amounts shall be included in the budget request. All monies received from all billings shall be deposited in the funds as identified in subsection A of this section.

E. All monies recovered by the state pursuant to litigation, recovery, salvage

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value of damaged property, proportionate share monies from any other existing state funds, or otherwise, for damages relating to either a liability, property or workers' compensation loss for which monies from the risk management revolving fund or construction insurance fund have been or will be paid shall be deposited in the respective fund.

F. If a revolving fund is projected to be exhausted while the legislature is in session, a special appropriation may be requested by the department of administration for monies to meet the needs of the funds. If the funds are exhausted at a time when the legislature is not in session, any final judgment shall accrue interest and shall be payable upon appropriation in the next succeeding regular session of the legislature. Interest on any judgment against this state paid for out of the risk management revolving fund shall accrue at the average yield offered by United States treasury bills during the course of the appeal and shall be paid in accordance with this section. If the appeal is lost by this state, the judgment amount plus interest at the rate prescribed in this subsection shall be paid.

G. All monies deposited in the risk management revolving fund are subject to annual legislative appropriation to the department of administration for use pursuant to this section. Monies in the construction insurance fund are continuously appropriated for the fund purposes. The funds established by subsection A of this section are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

H. A ten thousand dollar death benefit shall be paid from the risk management revolving fund to the estate of a deceased volunteer, who is registered as a volunteer by the agency, board or commission, or to an employee who is not subject to the provisions of section 38-651.02, upon proof of death while in the course and scope of duties as prescribed in section 41-621, subsection P for any state agency, board or commission.

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41-623.

41-623. Risk management and loss control

A. The department of administration shall promulgate rules and regulations to initiate and implement a risk management and loss control program for all state departments, agencies, boards and commissions for the purpose of



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reducing risks, accidents and property liability and workers' compensation losses.

B. The department of administration shall annually provide each state department, agency, board and commission with a report of property, liability and workers' compensation claims filed and an analysis of the cause of loss. State departments, agencies, boards and commissions shall submit a reply to the department of administration outlining plans to correct property and liability exposures to loss.

C. The department of administration shall annually issue to the governor and legislature a summary report of property, liability and workers' compensation losses incurred by state departments, agencies, boards and commissions. The report shall include loss control plans and recommendations for corrective action.

D. All state departments, agencies, boards and commissions shall cooperate with, assist and provide requested information to the department of administration in the initiation, implementation and operation of the risk management and loss control program.

E. Concurrent with the commencement of planning for the construction, alteration or additions to state-owned or leased buildings, and the purchase of specialized personal property, the department of administration shall be consulted for the purpose of implementing the risk management and loss control program and to assure compliance with generally accepted loss control practices.

41-624. 41-624. Definitions; commissions on sales of insurance to the state; violation; classification

A. In this section, unless the context otherwise requires:

1. "Bidder" or "offeror" means a person who has submitted a bid or proposal for the sale of insurance to the state in response to a request for a proposal from the department of administration.

2. "Commissions" means any contingent commission, excess profits commission or other commission that may be based on losses or experience

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or other compensation that a successful contractor for the sale of insurance to the state may be eligible to receive from insurance carriers or underwriters.

3. "Solicitation" means all documents whether attached or incorporated by reference that are utilized for soliciting bids or proposals.

B. Only a contractor or persons who have performed actual services for a contractor in connection with a bid shall be eligible to receive directly or indirectly any commissions.

C. A contractor may pay commissions directly or indirectly only to persons who have performed actual services for the contractor in connection with the solicitation.

D. Any contractor who pays commissions in violation of subsection C of this section or any person who receives commissions in violation of subsection B of this section shall be subject to the following penalties:

1. The contractor or the person who receives commissions, or both, shall be guilty of a class 2 misdemeanor.

2. The contractor or the person who receives the commissions, or both, shall be liable under section 20-295 for suspension, revocation or denial of renewal of any licenses issued under title 20, chapter 2, article 3, 3.1, 3.2, 3.3 or 3.5.

3. The contractor and the person who receives commissions shall be jointly and severally liable to the state for the amount of the commissions paid in violation of subsection B or C of this section.

4. The contractor and the person who receives the commissions shall be jointly and severally liable to competing bidders or offerors under the same solicitation for the amount of the commissions paid in violation of subsection B or C of this section as well as for reasonable attorney fees of the competing bidders or offerors in recovering the penalty. Where there is more than one competing bidder or offeror, the contractor and the person who receives commissions shall be subject only to one liability under this subsection and the competitors who have joined in or intervened before



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judgment in the first action under this subsection to proceed to final judgment shall be entitled to equal shares in the penalty recovered.

41-625. 41-625. Environmental risk management; purpose; administration

A. Environmental risk management responsibility is established within the department of administration. The department of administration shall use resources from the risk management revolving fund to prevent, manage and remedy environmental damage and health threats associated with property and facilities owned or operated by this state on or at which materials, operations and hazardous wastes are located or conducted, including the following functions:

1. Investigation of release of hazardous substances.
2. Site characterization.
3. Analysis and feasibility studies.
4. Remedial action.
5. Site maintenance.
6. Loss prevention and reduction expenses.

B. The department of administration shall pay from the risk management revolving fund environmental property and environmental liability claims and processing costs including adjusting costs, legal defense costs and attorney fees.

C. Actuarial projections of the costs for environmental property and liability claims shall be obtained each year in the same manner as those for property and casualty claims. Monies requested for the risk management revolving fund as specified in section 41-622, subsection D shall include monies to pay for environmental property and liability claims, lawsuits and costs.

41-626. 41-626. Mobile food vendors; insurance requirement prohibited; definition

A. This state or any department or agency of this state may not require a mobile food vendor to maintain an insurance policy that names this state as an additional insured unless the mobile food vendor is attending an event



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sponsored by this state.

B. For the purposes of this section, "mobile food vendor" means any person who owns, controls, manages or leases a mobile food unit or contracts with a person to prepare foods and vend from, drive or operate a mobile food unit.

41-1281. 41-1281. Definitions

In this article, unless the context otherwise requires:

1. "Bribe" means any money, goods, right in action, property, thing of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in his action, vote or opinion, in any official capacity.



Proof-of-Claim – G. 6 / 7

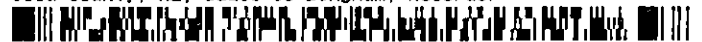
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ARS Title 11 – Counties provisions

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12/02/2021 10:19:01 AM Receipt #: 21-13425

Rec Fee: \$30.00 Darrell Hill

Gila County, Az, Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

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- Limitation on regulatory actions; health, safety and welfare; goods and services; definitions
- 11-1612
- Regulation of occupation, trade or profession; notice; hearing; exemptions; definition



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1-201.	<p>1-201. <u>Adoption of common law; exceptions</u></p> <p>The common law only so far as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people thereof, and not repugnant to or inconsistent with the Constitution of the United States or the constitution or laws of this state, or established customs of the people of this state, is adopted and shall be the rule of decision in all courts of this state.</p>
11-131.	<p>11-131. <u>Definitions</u></p> <p>In this article, unless the context otherwise requires:</p> <ol style="list-style-type: none">1. "Affected county" means each existing county affected by a proposed formation of new counties.2. "Assessed valuation" means the net assessed valuation used for purposes of levying primary property taxes for the tax year immediately preceding the filing of the petition for the formation of counties.3. "Commission" means the county formation commission established pursuant to section 11-136.4. "New county" means a county which has been approved by the voters at an election on formation held pursuant to section 11-137.5. "Privately owned land" includes all lands other than federal, Indian, state, county, municipal and other governmental lands which are exempt from taxation under article IX, section 2, Constitution of Arizona.6. "Proposed county" means a county proposed by petition pursuant to section 11-133 to be formed from an affected county or counties but before an election on formation is held pursuant to section 11-137. The term applies to each territory proposed as a county including the county in which an existing county seat is proposed to be located.
11-136.	<p>11-136. <u>County formation commission</u></p> <p>A. Within fifteen days of receipt of certification of the petition pursuant to section 11-135, subsection D, the governor shall appoint a county formation commission of three members, none of whom may reside in an affected county and no more than two of whom may be members of the same political party. At least one of the appointees must be a member of the state bar of Arizona, at least one of the appointees must be a certified public accountant and at least one of the appointees must have experience in property valuation and appraisal procedures. The</p>



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governor shall designate one member to act as chairman. Members of the commission are entitled to receive compensation of one hundred dollars for each day engaged in the service of the commission plus reimbursement for travel and subsistence expenses pursuant to title 38, chapter 4, article 2. The commission may employ or contract for such clerical and professional staff services as may be necessary to perform its functions. The initial meeting of the commission shall be held at the call of the chairman within ten days after notice and acceptance of the members' appointment. No member, employee, agent or representative of the commission may use or promise to use any official authority or influence for the purpose of influencing the outcome of the proposed formation of new counties.

B. The commission shall consider and determine:

1. The fiscal impact of the proposed county formation and the economic viability of the proposed counties, including the costs of the proceedings to form the counties and potential disruptions and delays in delivery of federal and state aid and payments to the proposed counties.
2. The comparative costs of providing services in the affected county or counties and each proposed county.
3. The projected revenues available to the affected county or counties and each proposed county.
4. The final boundaries of the proposed counties.
5. A procedure for the orderly and timely transfer of service functions and responsibilities from the affected county or counties to each proposed county.
6. The division of each proposed county into supervisorial districts.
7. The proposed transfer, division and apportionment between the proposed counties of all real and personal property, valued at replacement cost less depreciation, and cash accounts owned by the affected county or counties.
8. Bonds and other indebtedness of the affected county or counties which are outstanding or authorized and other contracts and obligations of the affected county or counties which would be divided, apportioned and assumed by the proposed county or counties.
9. Estimated taxes, assessments or other authorized charges necessary in each proposed county to meet these liabilities in the first full fiscal year after the proposed county or counties are formed.
10. Each community college district, school district and special taxing district



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within the affected county or counties.

11. The indigent population of the proposed county or counties, determined as of the commission's initial meeting, for purposes of the Arizona health care cost containment system.

C. At any time before the final commission hearing the commission shall receive written requests to modify the boundaries of the proposed counties from any real property owner or registered voter in a proposed county. Such a request must contain sufficient information to identify the property or territory affected by a proposed modification and state the reasons for the request. The commission shall not change the boundaries described in the petition filed with the secretary of state unless modification is necessary in the interest of public convenience and necessity or to maintain an existing community of interest. The boundaries of a proposed county shall not pass through or divide an incorporated city or town or, if practicable, a special taxing district established under title 48 which receives financial assistance from the county. If possible, the boundaries shall be set along existing survey lines or political or administrative boundaries. The requirements of section 11-132, subsection B apply to proposed counties formed by the final boundaries prescribed by the commission.

D. In the case of a countywide district, a district which receives financial assistance from the county or which is governed by the affected county's board of supervisors, the auditor general shall audit and inventory the district's assets and liabilities and, if necessary, determine a fair and equitable division of them between the proposed counties.

E. All officers and employees of an affected county and all state agencies shall cooperate with, perform any functions required by and produce any books, records or other documents of the county requested by and necessary for the commission to perform its duties.

F. Within one hundred eighty days after notice and acceptance of the members' appointments the commission shall adopt a report and summary of its findings and its determination of the final boundaries of each proposed county. The commission shall transmit copies of the report to the person or organization proposing the county boundary changes, the secretary of state, the governor, the attorney general, the clerk of the board of supervisors of each affected county, the president of the senate, the speaker of the house of representatives and each legislator whose district is in an affected county.

G. The findings and determinations of the commission are the terms and



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	<p>conditions of the formation of the proposed counties. Except as otherwise authorized by this article, those terms and conditions are final and binding in each affected county and in each new county if the new counties are established pursuant to this article.</p>
11-140.	<p>11-140. <u>Election of county officers</u></p> <p>A. County officers of new counties, except clerk of the superior court, shall be nominated and elected at the next regular primary election and general election at which the president of the United States is elected following the election on formation. County officers shall not be elected for the affected county or counties at those elections. The initial clerk of the superior court of each new county shall be appointed under section 11-142, subsection E.</p> <p>B. The secretary of state shall order, conduct and canvass the elections pursuant to title 16 so far as practicable and may:</p> <ol style="list-style-type: none"> 1. If there is only one affected county, delegate the election responsibilities under this section as he deems appropriate to its board of supervisors. 2. Order the revision of precinct boundaries as may be necessary from those used in the election on formation. 3. Assign a nondescriptive designation to a new county for purposes of conducting the elections pending the selection of a county name pursuant to section 11-141. <p>C. Except for the purposes prescribed in section 11-142, all county officers elected at the election hold office from January 1 following the election until the times provided by general law for the next election and qualification of such officers and until their successors are elected and qualified.</p>
11-202.	<p>11-202. <u>County as corporate body; name</u></p> <p>A. Each county is a body politic and corporate, possessing all the powers expressly provided in the constitution or laws of this state and such powers as are necessarily implied therefrom.</p> <p>B. The name of the county designated in article 1, chapter 1 of this title is its corporate name by which it shall be known and designated in all actions and proceedings.</p>



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11-216.	<p>11-216. <u>Chairman; quorum; public sessions</u></p> <p>A. The supervisors shall elect a chairman, who, in addition to his other duties, shall sign all orders and warrants of the board.</p> <p>B. A majority of the board constitutes a quorum for the transaction of business.</p> <p>C. All sessions of the board shall be public.</p>
11-218.	<p>11-218. <u>Subpoena of witnesses; production of books and papers</u></p> <p>The board may, by its chairman, issue subpoenas to compel attendance of any person and the production of any records relating to the affairs of the county for examination upon any matter within the board's jurisdiction. A witness is bound to attend, when served, and to answer all questions which the witness would be bound to answer in the matter before a court. Obedience to the subpoena, or to an order to attend or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by law upon courts of record.</p>
11-223.	<p>11-223. <u>Misconduct by supervisor; penalty</u></p> <p>A supervisor who neglects or refuses to perform any duty imposed on him without just cause, or who wilfully violates any law provided for or relating to the office of supervisor, or fraudulently or corruptly performs any duty imposed upon him by law, or wilfully, fraudulently or corruptly attempts to perform an act as supervisor unauthorized by law, in addition to other penalties or punishment prescribed, shall forfeit to the county five hundred dollars for every such act, which may be recovered on his official bond, and is further liable on his official bond to any person injured thereby for all damages sustained.</p>
11-251.18.	<p>11-251.18. <u>Adoption of rules; procedures; exemptions; definitions</u></p> <p>A. The board of supervisors shall adopt procedures for the adoption, amendment, repeal and enforcement of rules.</p> <p>B. The procedures shall contain at least the following provisions for the county department that is proposing the change:</p> <p>1. The department shall provide at least two weeks' notice of a meeting at which the public is able to provide comments on the draft language of the proposed rule. The notice shall include the entire text of the draft proposed rule and it shall be made available to the public. The department shall accept written or verbal</p>



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comments on the draft language.

2. The department shall provide at least two weeks' notice of a meeting at which the final text of the proposed rule is considered by the board of supervisors. The notice shall include the entire text of the final version of the proposed rule and it shall be made available to the public. At least one week before the meeting, the department shall provide the public with the department's written responses to written public comments and may provide written responses to verbal comments.

3. The department shall provide the board of supervisors with copies of the public comments and the department's written responses to the public comments. If as a result of public comments or internal review, the board of supervisors determines that the text of a proposed rule requires substantial change, the board of supervisors shall issue a supplemental notice containing the changes to the proposed rule and shall provide for additional public comment before adoption.

C. Notwithstanding this section, the board of supervisors may provide alternative procedures for the adoption of a rule if the board makes a finding that an emergency exists and adoption of the rule is necessary to protect the public health, safety or welfare, to avoid an imminent budget reduction or to avoid serious prejudice to the public interest. Within a reasonable time after adopting an emergency rule, the board of supervisors shall review the emergency rule to determine whether the rule should continue in effect or be terminated.

D. Notwithstanding this section, the board of supervisors may provide alternative procedures for the adoption of a rule if the rule is required by state or federal law or regulation, and the basis for the requirement to adopt the rule is not the result of delay or inaction by the board of supervisors.

E. Notwithstanding this section, the board of supervisors may provide alternative procedures for the expedited adoption, amendment or repeal of a rule if the expedited rulemaking does not increase the cost of regulatory compliance or reduce the procedural rights of regulated parties.

F. A rule cannot be enforced without substantial compliance with this section, except those rules that were approved by the board of supervisors before July 3, 2015.

G. The department may provide the notices required by this section on the department's website.

H. The department may meet informally with any interested party for the purpose of discussing any proposed rule.



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I. This section does not apply to:

1. Ordinances adopted or amended by the board of supervisors pursuant to section 11-251.05, chapter 6, article 2 of this title, title 42 or title 43.

2. Substantive policy statements.

3. Procedural documents that only affect the internal procedures of the county and that do not impose additional requirements, conditions or penalties on regulated parties.

4. Use or adoption of any form whose contents or substantive requirements are consistent with an ordinance or statute, and any procedures for the execution or use of the form.

5. A county function, power or duty that is established pursuant to title 49, chapter 3, article 3.

6. County subdivision regulations pursuant to chapter 6, article 3 of this title.

J. For the purposes of this section:

1. "Department" means any county department or agency or any other unit of county government.

2. "Rule" means a county statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of a county. Rule includes prescribing fees or the amendment or repeal of an existing rule but does not include intra-agency memoranda that are not delegation agreements.

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11-251.

11-251. Powers of board

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that the officers faithfully perform their duties and direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into districts or precincts as required by law, change the districts or precincts and create others as convenience requires.



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3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.
4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax for that purpose as may be authorized by law.
5. Provide for the care and maintenance of the sick of the county, erect and maintain hospitals for that purpose and, in its discretion, provide a farm in connection with the county hospital and adopt ordinances for working the farm.
6. Provide suitable rooms for county purposes.
7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control the property, but a purchase of real property shall not be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and not more than the appraised value shall be paid for the property.
8. Cause to be erected and furnished a courthouse, jail and hospital and other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.
9. Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years after the date of sale and on such terms and for such consideration as the board shall prescribe, any property belonging to the county that the board deems advantageous for the county to sell, or that the board deems unnecessary for use by the county, and shall pay the proceeds of the sale into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. If the property for sale is real property, the board shall have the property appraised by an appraiser who is licensed or certified pursuant to title 32, chapter 36. The appraiser shall establish a market value as defined in section 28-7091 for the property. The minimum acceptable bid for the purchase of the property shall be at least ninety percent of the market value, except that if the property has no market value or a net value as defined in section 28-7095, subsection F of \$10,000 or less, the value of the property may be justified by a market analysis that is based on comparable sales. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other



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counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county, with unanimous consent of the board and without a public auction, may sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county, with unanimous consent of the board and without public auction, may grant an easement on county property for public purposes to a utility as defined in section 40-491. A county, with unanimous consent of the board and without public auction, may sell or lease any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated or operating in this state. A county may dispose of surplus equipment and materials that have little or no value or that are unauctionable in any manner authorized by the board.

10. Examine and exhibit the accounts and performance of all officers having the care, management, collection or disbursement of monies belonging to the county or appropriated by law or otherwise for the use and benefit of the county. The working papers and other audit files in an examination and audit of the accounts and performance of a county officer are not public records and are exempt from title 39, chapter 1. The information contained in the working papers and audit files prepared pursuant to a specific examination or audit is not subject to disclosure, except to the county attorney and the attorney general in connection with an investigation or action taken in the course of their official duties.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer for that purpose and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide



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for the expenses thereof.

18. With the approval of the department of health services, contract with any qualified person to provide all or part of the health services, funded through the department of health services with federal or state monies, that the board in its discretion extends to residents of the county.

19. Contract for county printing and advertising, and provide books and stationery for county officers.

20. Provide for rebinding county records, or, if necessary, the transcribing of county records.

21. Make and enforce necessary rules and regulations for the government of its body, the preservation of order and the transaction of business.

22. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder and the secretary of state.

23. Establish, maintain and conduct or aid in establishing, maintaining and conducting public aviation fields, purchase, receive by donation or lease any property necessary for that purpose, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all such property. If any such property or part of that property is not needed for these purposes, it shall be sold by the board and the proceeds shall be paid into the general fund of the county.

24. Acquire and hold property for the use of county fairs and conduct, take care of and manage them.

25. Authorize the sheriff to offer a reward, not exceeding \$10,000 in one case, for information leading to the arrest and conviction of persons charged with crime.

26. Contract for the transportation of insane persons to the state hospital or direct the sheriff to transport such persons. The county is responsible for such expense to the extent the expense is not covered by any third-party payor.

27. Provide for the reasonable expenses of burial for deceased indigents as provided in section 36-831 and maintain a permanent register of deceased indigents, including name, age and date of death, and when burial occurs, the board shall mark the grave with a permanent marker giving the name, age and date of birth, if known.



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28. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, on such terms as may be agreed on by the board and the secretary of the interior of the United States.
29. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways that pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into before June 26, 1952 are validated and confirmed.
30. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government, including receiving and accepting payment of monies by credit card or debit card, or both. Any fees or costs incurred by the use of the credit or debit card shall be paid by the person tendering payment unless the charging entity determines that the financial benefits of accepting credit cards or debit cards exceeds the additional processing fees.
31. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.
32. Budget for funds for foster home care during the school week for children with intellectual disabilities and children with other disabilities who reside within the county and attend a school for students with disabilities in a city or town within the county.
33. Do and perform all acts necessary to enable the county to participate in the economic opportunity act of 1964 (P.L. 88-452; 78 Stat. 508), as amended.
34. Provide a plan or plans for its employees that provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, United States Code. Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.
35. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.
36. Subject to the prohibitions, restrictions and limitations as set forth in section 11-812, adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.



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37. Make and enforce necessary ordinances for the operation and licensing of any establishment not in the limits of an incorporated city or town in which is carried on the business of providing baths, showers or other forms of hydrotherapy or any service of manual massage of the human body.

38. Provide pecuniary compensation as salary or wages for overtime work performed by county employees, including those employees covered by title 23, chapter 2, article 9. In so providing, the board may establish salary and wage plans incorporating classifications and conditions prescribed by the federal fair labor standards act.

39. Establish, maintain and operate facilities that provide for physical evaluation, diagnosis and treatment of patients and that do not keep patients overnight as bed patients or treat patients under general anesthesia.

40. Enact ordinances under its police authority prescribing reasonable curfews in the entire unincorporated area or any area less than the entire unincorporated area of the county for minors and fines not to exceed the fine for a petty offense for violation of such ordinances. This paragraph does not require a request from an association or a majority of the residents of an area before the board may enact an ordinance applicable to the entire or any portion of the unincorporated area. An ordinance enacted pursuant to this paragraph shall provide that a minor is not violating a curfew if the minor is accompanied by a parent, a guardian or an adult having supervisory custody, is on an emergency errand or has been specifically directed to the location on reasonable, legitimate business or some other activity by the parent, guardian or adult having supervisory custody. If no curfew ordinance is applicable to a particular unincorporated area of the county, the board may adopt a curfew ordinance on the request or petition of either:

(a) A homeowners' association that represents a majority of the homeowners in the area covered by the association and to which the curfew would apply.

(b) A majority of the residents of the area to which the curfew would apply.

41. Lease or sublease personal property owned by the county to other political subdivisions of this state to be used for a public purpose.

42. In addition to the agreements authorized by section 11-651, enter into long-term agreements for the purchase of personal property, provided that the board may cancel any such agreement at the end of a fiscal year, at which time the seller may repossess the property and the agreement is deemed terminated.

43. Make and enforce necessary ordinances not in conflict with the laws of this



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state to regulate off-road recreational motor vehicles that are operated within the county on public lands without lawful authority or on private lands without the consent of the lawful owner or that generate air pollution. For the purposes of this paragraph, "off-road recreational motor vehicle" means three and four wheel vehicles manufactured for recreational nonhighway all-terrain travel.

44. Acquire land for roads, drainage ways and other public purposes by exchange without public auction, except that notice shall be published thirty days before the exchange, listing the property ownership and descriptions.

45. Purchase real property for public purposes, provided that final payment is made not later than five years after the date of purchase.

46. Lease-purchase real property and improvements for real property for public purposes, provided that final payment is made not later than twenty-five years after the date of purchase. Any increase in the final payment date from fifteen years up to the maximum of twenty-five years shall be made only on unanimous approval by the board of supervisors.

47. Make and enforce ordinances for the protection and disposition of domestic animals subject to inhumane, unhealthful or dangerous conditions or circumstances. An ordinance enacted pursuant to this paragraph shall not restrict or limit the authority of the game and fish commission to regulate the taking of wildlife. This paragraph does not limit or restrict the authority granted to cities, towns or counties pursuant to section 13-2910. For the purposes of this paragraph, "domestic animal" means an animal kept as a pet and not primarily for economic purposes.

48. If a part of a parcel of land is to be taken for roads, drainage, flood control or other public purposes and the board and the affected property owner determine that the remainder will be left in such a condition as to give rise to a claim or litigation concerning severance or other damage, acquire the whole parcel by purchase, donation, dedication, exchange, condemnation or other lawful means, and the remainder may be sold or exchanged for other properties needed for any public purpose.

49. Make and enforce necessary rules providing for the reimbursement of travel and subsistence expenses of members of county boards, commissions and advisory committees when acting in the performance of their duties, if the board, commission or advisory committee is authorized or required by federal or state law or county ordinance, and the members serve without compensation.

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50. Provide a plan or plans for county employee benefits that allow for participation in a cafeteria plan that meets the requirements of the United States internal revenue code of 1986.

51. Provide for fringe benefits for county employees, including sick leave, personal leave, vacation and holiday pay and jury duty pay.

52. Make and enforce ordinances that are more restrictive than state requirements to reduce or encourage the reduction of carbon monoxide and ozone levels, provided an ordinance does not establish a standard for vehicular emissions, including ordinances to reduce or encourage the reduction of the commuter use of motor vehicles by employees of the county and employees whose place of employment is in unincorporated areas of the county.

53. Make and enforce ordinances to provide for the reimbursement of up to one hundred percent of the cost to county employees of public bus or van pool transportation to and from their place of employment.

54. Lease for public purposes any real property, improvements for real property and personal property under the same terms and conditions, to the extent applicable, as are specified in sections 11-651 and 11-653 for lease-purchases.

55. Enact ordinances prescribing regulation of alarm systems and providing for civil penalties to reduce the incidence of false alarms at business and residential structures relating to burglary, robbery, fire and other emergencies not within the limits of an incorporated city or town.

56. In addition to paragraph 9 of this section, and notwithstanding section 23-504, sell or dispose of, at no less than market value, county personal property that the board deems no longer useful or necessary through a retail outlet or to another government entity if the personal property has a market value of not more than \$1,000, or by retail sale or private bid, if the personal property has a market value of not more than \$15,000. Notice of sales in excess of \$1,000 shall include a description and sale price of each item and shall be published in a newspaper of general circulation in the county, and for thirty days after notice other bids may be submitted that exceed the sale price by at least five percent. The county shall select the highest bid received at the end of the thirty-day period.

57. Sell services, souvenirs, sundry items or informational publications that are uniquely prepared for use by the public and by employees and license and sell information systems and intellectual property developed from county resources that the county is not obligated to provide as a public record.



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58. On unanimous consent of the board of supervisors, license, lease or sell any county property pursuant to paragraphs 56 and 57 of this section at less than market value to any other governmental entity, including this state, cities, towns, public improvement districts or other counties within or outside of this state, or for a specific purpose to any charitable, social or benevolent nonprofit organization incorporated or operating in this state.

59. On unanimous consent of the board of supervisors, provide technical assistance and related services to a fire district pursuant to an intergovernmental agreement.

60. Adopt contracting procedures for the operation of a county health system pursuant to section 11-291. Before the adoption of contracting procedures the board shall hold a public hearing. The board shall publish one notification in a newspaper of general circulation in the county seat at least fifteen days before the hearing.

61. Enter into an intergovernmental agreement pursuant to chapter 7, article 3 of this title for a city or town to provide emergency fire or emergency medical services pursuant to section 9-500.23 to a county island as defined in section 11-251.12. The board may charge the owners of record in the county island a fee to cover the cost of an intergovernmental agreement that provides fire and emergency medical services.

62. In counties that employ or have designated an animal control county enforcement agent pursuant to section 11-1005, enter into agreements with foundations or charitable organizations to solicit donations, property or services, excluding enforcement or inspection services, for use by the county enforcement agent solely to perform nonmandated services and to fund capital improvements for county animal control, subject to annual financial and performance audits by an independent party as designated by the county board of supervisors. For the purposes of this paragraph, nonmandated services are limited to low cost spay and neuter services, public education and outreach efforts, pet adoption efforts, care for pets that are victims of cruelty or neglect and support for volunteer programs.

63. Adopt and provide for the enforcement of ordinances prohibiting open fires and campfires on designated lands in the unincorporated areas of the county when a determination of emergency is issued by the county emergency management officer and the board deems it necessary to protect public health and safety on those lands.

64. Fix the amount of license fees to be paid by any person, firm, corporation or

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	<p>association for carrying on any game or amusement business in unincorporated areas of the county and prescribe the method of collection or payment of those fees, for a stated period in advance, and fix penalties for failure to comply by fine. This article does not authorize any county to require an occupational license or fee for any activity if state law precludes requiring such a license or fee.</p> <p>65. Adopt and enforce ordinances for the prevention, abatement and removal of graffiti, providing that any restrictions on the retail display of potential graffiti tools be limited to any of the following, as determined by the retail business:</p> <p>(a) In a place that is in the line of sight of a cashier or in the line of sight from a work station normally continuously occupied during business hours.</p> <p>(b) In a manner that makes the product accessible to a patron of the business establishment only with the assistance of an employee of the establishment.</p> <p>(c) In an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours.</p> <p>66. Adopt ordinances and fees related to the implementation of a local stormwater quality program pursuant to title 49, chapter 2, article 11.</p>
11-253.	<p><u>11-253. Reports and bonds of county officers</u></p> <p>A. The board may require any county officer to make reports under oath on any matter connected with the duties of his office, and may require the officer to give such bonds or further bonds as may be necessary for the faithful performance of his respective duties. An officer who neglects or refuses to make the report, or to give the bond within ten days after being so required, may be removed from office by the board and the office declared vacant. The board may then fill the vacancy.</p> <p>B. Every officer from whom an additional bond is required by the board may appeal from the order to the superior court, which shall determine and fix the amount of the bond. The appeal may be taken by filing with the board a notice of appeal, and thereupon the clerk shall certify all proceedings to the court.</p>
11-254.	<p><u>11-254. Contribution for economic development</u></p> <p>In addition to any other provision of law, the board of supervisors may appropriate from the general fund each year up to one million five hundred thousand dollars for the purpose of economic development activity which is operated and maintained within the boundaries of the county and which the board determines is for the benefit of the public. Contributions may be made to any governmental agency or to a nonprofit corporation which enjoys and maintains federal tax</p>



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exempt status as long as all monies are utilized for the purpose determined to be public by the board. If more than one nonprofit corporation is selected for a fiscal year, the board shall determine the portion of the money that each will receive.

11-401. 11-401. Enumeration of officers

A. The officers of the county are:

1. Sheriff.
2. Recorder.
3. Treasurer.
4. School superintendent.
5. County attorney.
6. Assessor.
7. Supervisors.
8. Clerk of the board of supervisors.
9. Tax collector.

B. The county treasurer shall be ex officio tax collector.

11-403. 11-403. Private practice of law prohibited; certain county attorneys; exceptions

A. The sheriff, the constable and the constable's deputies are prohibited from practicing law or forming a partnership with an attorney-at-law.

B. In a county having a population of sixty thousand or more persons, the county attorney or the county attorney's deputies shall not engage in the private practice of law, except:

1. With consent of the board of supervisors, a special deputy county attorney may be appointed on a fee basis in like manner as a special assistant attorney general.
2. Deputy county attorneys may, but in no circumstances shall be required to, represent private clients in pro bono, private civil matters under the following circumstances:

(a) The representation will be conducted exclusively during off hours or while on leave and the attorney will not receive any compensation for such services.



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	<p>(b) The client is not seeking an award of attorney fees for the services.</p> <p>(c) The services are for an individual in need of personal legal services who does not have the financial resources to pay for the professional services or for a nonprofit, tax exempt charitable organization formed for the purpose of providing social services to individuals and families.</p> <p>(d) The representation will not interfere with the performance of any official duties.</p> <p>(e) The subject matter of pro bono representation is outside of the area of practice to which the attorney is assigned in the county attorney's office and the activity will not appear to create a conflict of interest.</p> <p>(f) The activity will not reflect adversely on this state, the county or any of their agencies.</p> <p>(g) The deputy county attorney's position will not influence or appear to influence the outcome of any matter.</p> <p>(h) The activity will not involve assertions that are contrary to the interest or position of this state, the county or any of their agencies.</p> <p>(i) The activity does not involve a criminal matter or proceeding or any matter in which this state or the county is a party or has a direct or substantial interest.</p> <p>(j) The activity will not use resources that will result in a cost to this state, the county or any of their agencies.</p> <p>(k) The attorney's supervisor may require the attorney to submit a prior written request to engage in pro bono work that includes a provision holding the agency harmless from any of the work undertaken by the attorney.</p> <p>C. Notwithstanding any provision of law or rule to the contrary, representation by an attorney of a pro bono client under subsection B, paragraph 2 of this section shall not disqualify the office from subsequently participating in any action affecting the client.</p>							
11-419.	<p><u>11-419. County salaries</u></p> <p>A. In counties having a population of five hundred thousand or more persons, the following annual salaries shall be paid to county officers:</p> <table> <tr> <td>Officer</td><td>Annual Salary</td><td>Annual Salary</td></tr> <tr> <td></td><td>Through</td><td>Beginning</td></tr> </table>	Officer	Annual Salary	Annual Salary		Through	Beginning	
Officer	Annual Salary	Annual Salary						
	Through	Beginning						



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December 31, 2024 January 1, 2025

Attorney	\$123,678	\$143,678
Assessor	76,600	96,600
Recorder	76,600	96,600
Sheriff	100,824	120,824
Superintendent of schools	76,600	96,600
Supervisor	76,600	96,600
Treasurer	76,600	96,600

B. In counties having a population of less than five hundred thousand persons, the following annual salaries shall be paid to county officers:

Officer	Annual Salary Through December 31, 2024	Annual Salary Beginning January 1, 2025
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Attorney	\$123,678	\$143,678
Assessor	63,800	83,800
Recorder	63,800	83,800
Sheriff	100,824	120,824
Superintendent of schools	63,800	83,800
Supervisor	63,800	83,800
Treasurer	63,800	83,800



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	<p>C. Each of the officers named in subsections A and B of this section, other than the board of supervisors and the county attorney, may appoint a chief deputy who shall receive an annual salary agreed on by the board of supervisors and the officer appointing the deputy.</p> <p>D. The county attorney shall devote full time to the county attorney's official duties and shall not engage in the private practice of law. The county attorney shall appoint a chief deputy who shall receive an annual salary agreed on by the board of supervisors and the officer appointing the chief deputy.</p> <p>E. In any county included under subsection B of this section, a chief deputy county attorney shall not be appointed unless authorized by the board of supervisors who may authorize or prohibit the chief deputy from engaging in the private practice of law. The annual salary of the chief deputy shall be in an amount agreed on by the county attorney and the board of supervisors.</p> <p>F. In case of a vacancy in office of any elected county officer included in subsections A and B of this section, the salary of the person appointed to fill such vacancy shall be the same for the balance of the unexpired term as that being paid the previous officeholder.</p>
11-441.	<p>11-441. <u>Powers and duties</u></p> <p>A. The sheriff shall:</p> <ol style="list-style-type: none">1. Preserve the peace.2. Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense.3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to the knowledge of the sheriff.4. Attend all courts, except justice and municipal courts, when an element of danger is anticipated and attendance is requested by the presiding judge, and obey lawful orders and directions issued by the judge.5. Take charge of and keep the county jail, including a county jail under the jurisdiction of a county jail district, and the prisoners in the county jail.6. Endorse upon all process and notices the year, month, day, hour and minute of reception, and issue to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception.7. Serve process and notices in the manner prescribed by law and certify under the



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sheriff's hand upon the process or notices the manner and time of service, or if the sheriff fails to make service, the reasons for failure, and return them without delay. When returnable to another county, the sheriff may enclose such process or notices in an envelope, addressed to the officer from whom received, and deposit it postage prepaid in the post office. The return of the sheriff is prima facie evidence of the facts stated in the return.

8. Secure, as soon as possible, the home of a deceased person located outside the boundaries of an incorporated city or town if the sheriff is unable to determine or locate the heirs or executor of the deceased person.

B. The sheriff may in the execution of the duties prescribed in subsection A, paragraphs 1 through 4 command the aid of as many inhabitants of the county as the sheriff deems necessary.

C. The sheriff shall conduct or coordinate within the county search or rescue operations involving the life or health of any person, or may assist in such operations in another county at the request of that county's sheriff, and may request assistance from any persons or agencies in the fulfillment of duties under this subsection.

D. The sheriff, in the execution of the duties prescribed in this section, may request the aid of volunteer posse and reserve organizations located in the county.

E. The sheriff may assist in the execution of the duties prescribed in this section in another county at the request of that county's sheriff.

F. The sheriff may require any prisoner who is on work release to reimburse the county for reasonable expenses incurred in connection with the release.

G. The board of supervisors of a county bordering the Republic of Mexico may adopt an ordinance pursuant to chapter 2 of this title allowing the sheriff to prevent the entry from this state into the Republic of Mexico at the border by any resident of this state who is under eighteen years of age if the minor is unaccompanied by a parent or guardian or does not have written consent for entry from a parent or guardian. The authority of the sheriff is only to prevent entry and not to otherwise detain the minor. This subsection shall not be construed to limit the authority of the sheriff pursuant to any other law. A county is not civilly or criminally liable for not adopting an ordinance pursuant to this subsection.

H. Notwithstanding section 13-3112, the sheriff may authorize members of the sheriff's volunteer posse who have received and passed firearms training that is approved by the Arizona peace officer standards and training board to carry a

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	deadly weapon without a permit while on duty.
11-454.	<p>11-454. <u>Service on sheriff</u></p> <p>Service of a paper, other than process, upon the sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours. When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, shall be executed by a constable, or a person appointed by the court.</p>
11-455.	<p>11-455. <u>Employment of prisoners; work projects</u></p> <p>The sheriff may employ prisoners, inside or outside the county jail, who have been sentenced to imprisonment in the county jail to such labor or occupation as he deems necessary, including, but not limited to, agricultural work projects or the production of articles needed for construction, operation, maintenance or use of a county department, office, institution or agency.</p>
11-456.	<p>11-456. <u>Delivery of property and papers to successor; return of executed process</u></p> <p>A. The sheriff shall deliver to his successor in office:</p> <ol style="list-style-type: none"> 1. The jail of the county, or of a county jail district, with all its appurtenances, and all the property of the county therein. 2. All prisoners then confined in the jail. 3. All process, commitments or other papers or documents in his custody authorizing or relating to the confinement of the prisoners, and if any process has been returned, a statement in writing of the contents thereof and when returned. 4. All writs and other original process, and all documents for the summoning of a grand or petit jury, then in his hands which have not been fully executed by him. 5. All executions, attachments and final process, and all property in his hands or possession by virtue of the levy of any writ. <p>B. Upon such delivery, the former sheriff shall execute in duplicate an instrument reciting the property, process, documents and prisoners delivered, specifying particularly the process or other authority by which each prisoner was committed and is detained, and whether such process or authority is returned or delivered to the new sheriff. The instrument shall be delivered to the new sheriff, who shall in</p>



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writing upon the duplicate copy, acknowledge receipt of the property, process, documents and prisoners therein specified, and shall deliver the duplicate and acknowledgment to the former sheriff.

C. The former sheriff shall return in his own name all original process, attachments and executions which he has fully executed.

11-457. 11-457. Refusal to deliver property or papers to successor

If a former sheriff neglects or refuses to deliver to his successor the jail, process, documents and prisoners in his charge, as required by section 11-456, the successor may take possession of the jail, take custody of the prisoners therein confined, and may compel the delivery of the process and documents in the manner provided by law.

11-493. 11-493. Duties

The county treasurer shall:

1. Receive all monies of the county, and other monies directed by law to be paid to the county treasurer, safely keep the monies and apply and pay the monies out, rendering account thereof as required by law.

2. Keep an account of the receipt and expenditure of the monies in books or electronic books that are provided for that purpose, in which shall be entered:

(a) The amount of monies received by the county treasurer and the time when, from whom and on what account the monies were received by the county treasurer.

(b) The amount of disbursements made by the county treasurer and the time when, to whom and on what account disbursements were made by the county treasurer.

3. Keep the county treasurer's books or electronic books so that the amount received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account.

4. Disburse the county monies:

(a) By county warrant that is issued by the board of supervisors and that is signed by the chairman and the clerk of the board.

(b) By electronic transfer with written authorization from a person designated by the governing board.



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	(c) As provided by law.
11-499.	<p>11-499. <u>Issuance of county bonds; liability</u></p> <p>The board of supervisors and not the county treasurer is the official issuer of county bonds, and the board of supervisors shall assume all liability on the bonds including bonds issued pursuant to sections 11-254.03, 11-264.01, 11-271, 11-281, 11-307, 11-371 and 11-721 and all other county bonds.</p>
11-532.	<p>11-532. <u>Powers and duties; definition</u></p> <p>A. The county attorney is the public prosecutor of the county and shall:</p> <ol style="list-style-type: none"> 1. Attend the superior and other courts within the county and conduct, on behalf of the state, all prosecutions for public offenses. 2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when the county attorney has information that the offenses have been committed. 3. If not engaged in criminal proceedings in the superior court, attend on the magistrates in cases of arrest if required by them, and attend before and give advice to the grand jury. 4. Draw indictments and informations, defend actions brought against the county and prosecute actions to recover recognizances forfeited in courts of record and actions for recovery of debts, fines, penalties and forfeitures accruing to the state or county. 5. Deliver receipts for monies or property received in the county attorney's official capacity and file duplicate receipts with the clerk of the board. 6. On the first Monday of January, April, July and October in each year, file with the board of supervisors an account, verified by oath, of all monies received in the county attorney's official capacity during the preceding three months, and at the same time pay it to the county treasurer. 7. When required, give a written opinion to county officers on matters relating to the duties of their offices. 8. Keep a register of official business, and enter in the register every action prosecuted, criminal or civil, and of the proceedings of the action. 9. Act as the legal advisor to the board of supervisors, attend its meetings and oppose claims against the county that the county attorney deems unjust or illegal.



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10. Act as attorney for school districts except as provided in section 15-343, or except in any lawsuits involving a conflict of interest with other county offices at which time the attorney general may represent the school district.

11. Act as attorney for the community college district except as provided in section 15-1448 or except in any lawsuits involving a conflict of interest with other county offices, at which time the attorney general may represent the community college district.

12. Defend all locally valued and assessed property tax appeals as provided in section 42-16208.

B. On receipt of an appellant's brief in a criminal appeal, the county attorney shall furnish the attorney general with a true statement of the facts in the case, together with the available authorities and citations that are responsive to the assignments or specifications of error.

C. The county attorney may represent a school district governing board member against whom an action is brought in the board member's individual capacity until it is established as a matter of law that the alleged activity or events that form the basis of the complaint were not performed, or not directed to be performed, within the scope or course of the member's duties.

D. Notwithstanding article 12 of this chapter, in connection with the investigation or prosecution of any matter involving the death of a person, the county attorney may request that the medical examiner, for the county in which the prosecution will take place, conduct the medical examination.

E. The county attorney may provide civil legal services to another county or other political subdivision of this state or an officer, employee or agency of a political subdivision of this state at the request of that county's or political subdivision's elected or appointed general counsel or pursuant to an intergovernmental agreement entered into by the county and the other political subdivision as provided in chapter 7, article 3 of this title at the request of the county attorney. Any intergovernmental agreement shall state any payment to be rendered for the services and the scope of the representation. The county attorney may also obtain civil legal services for the county or for an officer, employee or agency of the county, from the elected or appointed general counsel of another county or other political subdivision of this state by request or pursuant to an intergovernmental agreement.

F. For the purposes of this section "general counsel" means an elected or appointed



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	county attorney, city attorney or town attorney.
11-621.	<p><u>11-621. Payments from treasury on demand; exception; duty of auditor general; payment of loss; alternative procedure</u></p> <p>A. A payment exceeding five hundred dollars may be made from the treasury of the county upon demand duly presented and allowed, but compensation due to jurors and witnesses and official salaries shall be paid without presentation of a claim.</p> <p>B. A demand is not required to authorize payment if all other required documentation as prescribed in the uniform system of bookkeeping for counties is maintained to support the payment.</p> <p>C. No demand shall be necessary for the board of supervisors to draw warrants upon the county treasury in amounts not exceeding five hundred dollars for the purpose of paying for goods and services costing five hundred dollars or less. The auditor general shall prescribe the manner in which the warrants described in this subsection shall be drawn and issued. Any loss arising out of the issuance of a warrant drawn and issued in the manner prescribed by the auditor general shall be a county charge.</p>
11-622.	<p><u>11-622. Demand; time limit for presentation of claim</u></p> <p>A. A person having a claim against a county shall present to the board of supervisors of the county against which the demand is held an itemized claim executed by the person under penalties of perjury, stating minutely what the claim is for, specifying each item, the date and amount of each item and stating that the claim and each item of the claim is justly due.</p> <p>B. Sellers of goods or services to a county may submit claims in writing or by electronic data interchange if such method is approved by the county board of supervisors. All other claims shall be submitted in writing.</p> <p>C. The board of supervisors shall not pay any claim unless demand for payment is made within six months after the last item of the account accrues.</p>
11-623.	<p><u>11-623. Record of demands and warrants</u></p> <p>The board shall cause to be entered separately in the minute book of the board:</p> <ol style="list-style-type: none"> 1. The number of each demand allowed. 2. By whom presented.



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	<p>3. The amount of the demand.</p> <p>4. From what fund the demand is payable.</p> <p>5. The number of each warrant ordered drawn by them and to whom payable.</p> <p>6. The amount of each warrant.</p> <p>7. For what service or supplies the warrant is drawn.</p>
11-626.	<p>11-626. <u>Claims by supervisors</u></p> <p>A claim against the county presented by a member of the board of supervisors shall be verified as other claims, and shall bear the written approval of at least one member of the board other than the claimant, and of the county treasurer.</p>
11-631.	<p>11-631. <u>Warrants; record</u></p> <p>A. Warrants on the county treasury shall be drawn and signed by the chairman and either the clerk of the board or the finance director in favor of the persons entitled to the warrants and shall distinctly specify the liability for which they are drawn.</p> <p>B. The warrants shall, commencing with the first Monday in July of each year, be numbered consecutively, and the number, date and amount of each, the name of the person to whom payable, and the purpose for which drawn shall be stated on the warrant. The clerk or the finance director shall keep a record of each warrant in the warrant book.</p>
11-634.	<p>11-634. <u>Payment of warrants, substitute checks and electronic funds transfers; definitions</u></p> <p>A. If the board of supervisors, the county superintendent of schools or a special district presents a warrant, substitute check or electronic funds transfer for payment, the county treasurer shall pay it and make a charge against the appropriate account. An electronic image of the original warrant or an electronic record of the electronic funds transfer provided by or made available by the servicing bank in a format approved by the county treasurer is deemed properly presented.</p> <p>B. For the purposes of this section:</p> <ol style="list-style-type: none">1. "Substitute check" has the same meaning prescribed in section 9-249.2. "Warrant" has the same meaning prescribed in section 9-249 and includes a record from which an electronic funds transfer may be made.



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11-645. 11-645. Warrants, substitute checks and electronic funds transfers unpaid for lack of monies; interest; notice; reissued warrants; definitions

A. Notwithstanding sections 11-635 and 11-636, this section applies to each county treasurer of a county in this state that has a population of two million or more persons.

B. If a revolving line of credit has not been obtained for a political subdivision or if the revolving line of credit has been spent and if there are insufficient monies in the issuer's account, the county treasurer may invest in the warrant, substitute check or electronic funds transfer prescribed in section 35-323, subsection A, paragraph 7. If the county treasurer does not invest in the presented warrant, substitute check or electronic funds transfer, the county treasurer shall notify the servicing bank that the warrant or substitute check will not be paid for lack of monies and from that time until there are sufficient monies to pay the original warrant, the original warrant may not bear more than ten percent interest per year. If a physical warrant is not presented to the county treasurer but the county treasurer receives an electronic notice that the warrant was issued, the treasurer shall notify the servicing bank that the warrant will not be paid for lack of monies, and from that time until there are sufficient monies to pay the original warrant, the original amount of the warrant may not bear more than ten percent interest per year.

C. The county treasurer shall keep a register of warrants and substitute checks presented for payment and a record of electronic funds transfers.

D. If there are sufficient monies in the treasury to pay the warrants drawing interest and registered pursuant to this section, the county treasurer shall notify the issuing entity of the availability of the monies. The monies shall be placed in a clearing fund or other appropriate fund that is agreed on by the county treasurer and district. The issuing entity shall issue new warrants that include the original principal amount and any accrued interest, and notify the county treasurer of the warrant numbers, amounts and payees.

E. If only part of the warrants presented on the same day are payable, the county treasurer shall designate the payable warrants and notify the issuing entity of the warrants to be paid and the warrants to be registered.

F. A warrant that is reissued pursuant to this section shall be processed pursuant to section 11-644.



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G. For the purposes of this section:

1. "Substitute check" has the same meaning prescribed in section 9-249.
2. "Warrant" has the same meaning prescribed in section 9-249 and includes a record from which an electronic funds transfer may be made.

11-801

11-801. Definitions

In this chapter, unless the context otherwise requires:

1. "Aggregate" means cinder, crushed rock or stone, decomposed granite, gravel, pumice, pumicite and sand.
2. "Area of jurisdiction" means that part of the county outside the corporate limits of any municipality.
3. "Board" means the board of supervisors.
4. "Commission" means the county planning and zoning commission.
5. "Indian reservation" means all lands that are held in trust by the United States for the exclusive use and occupancy of Indian tribes by treaty, law or executive order and that are currently recognized as Indian reservations by the United States department of the interior.
6. "Inspector" means the county zoning inspector.
7. "Newspaper of general circulation in the county seat" means a daily or weekly newspaper if any is published in the county seat.
8. "Rezoning" means a change in the zoning ordinance changing the zoning district boundaries within an area previously zoned.
9. "Zoning district" means any portion of a county in which the same set of zoning regulations applies.
10. "Zoning ordinance" means an ordinance that is adopted by the board of supervisors and that contains zoning regulations together with a map setting forth the precise boundaries of zoning districts within which the various zoning regulations are effective.
11. "Zoning regulations" means provisions that govern the use of land or buildings, or both, the height and location of buildings, the size of yards, courts and open spaces, the establishment of setback lines and such other matters as may otherwise be authorized under this chapter and that the board deems suitable and proper.

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	12. "Zoning regulations amendment" means a change in the zoning ordinance that modifies, adds to, transfers or repeals one or more zoning regulations or that adds one or more zoning regulations.
11-951.	<p><u>11-951. Definition of public agency</u></p> <p>For the purposes of this article, "public agency" includes the federal government or any federal department or agency, Indian tribes, this state, any other state, all departments, agencies, boards and commissions of this state or any other state, counties, school districts, fire districts, cities, towns, all municipal corporations, and any other political subdivisions of this state or any other state.</p>
11-952.01.	<p><u>11-952.01. Public agency pooling of property, fidelity, liability, workers' compensation, life, health, accident and disability coverage; exemptions; board of trustees; contract; termination; audit; insolvency; definition</u></p> <p>A. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article for the joint purchasing of insurance, including prepaid legal insurance or reinsurance, or to pool retention of their risks for property, fidelity and liability losses and to provide for the payment of such property loss, fidelity loss, prepaid legal insurance or claim of liability made against any member of the pool, including any elected or appointed official, officer or employee covered by the pool, on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party.</p> <p>B. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article to establish a workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party. A workers' compensation pool established pursuant to this subsection may provide coverage for workers' compensation, employers' liability and occupational disease claims. A workers' compensation pool is subject to approval as a self-insurer by the industrial commission of Arizona pursuant to section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and rules adopted pursuant to that chapter in addition to the requirements of this section. The industrial commission of Arizona, by rule, resolution or order, may adopt requirements for the administration of a workers' compensation pool under</p>



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this subsection, including separation or commingling of funds, accounting, auditing, reporting, actuarial standards and procedures.

C. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements for the joint purchase of life insurance, disability insurance, accident insurance or health benefits plan insurance or may pool retention of their risks of loss for life, disability, health or accident claims made against any public agency member of the pool or to jointly provide the health and medical services authorized in section 36-2907. Public agencies may establish pools for the purposes of this subsection by any of the following methods:

1. On a cooperative or contract basis.
2. By the formation of a nonprofit corporation.
3. By contracts or intergovernmental agreements with the Arizona health care cost containment system administration.
4. By the execution of a trust agreement directly by the agencies or by contracting with a third party.

D. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article for the joint purchasing of insurance for property, liability or workers' compensation losses or to pool retention of their risks for property and liability loss to cover the public agency, its elected officials and employees and the contractor and subcontractor of every tier engaged in the performance of a construction project for the public agency. Public agencies may establish pools for the purposes of this subsection by any of the following methods:

1. On a cooperative or contract basis.
2. By the formation of a nonprofit corporation.
3. By the execution of a trust agreement directly by the agencies or by contracting with a third party.

E. Section 10-11301 does not apply to nonprofit corporations formed pursuant to this section.

F. Title 41, chapter 23 does not apply to the procurement of insurance or reinsurance, or to the procurement of the services provided for in subsection K, paragraph 8 of this section, by any pool established pursuant to this section.



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G. Title 43 does not apply to any pool established pursuant to this section. Any pool established pursuant to this section is exempt from taxation under title 43.

H. Each pool shall be operated by a board of trustees consisting of at least three persons who are elected officials or employees of public entities within this state. The board of trustees shall notify the director of the department of insurance and financial institutions of the existence of the pool and shall file with the director and with the attorney general a copy of the intergovernmental agreement or contract. The board of trustees of each group shall do all of the following:

1. Establish terms and conditions of coverage within the pool, including exclusions of coverage.
2. Ensure that all claims are paid promptly.
3. Take all necessary precautions to safeguard the assets of the group.
4. Maintain minutes of its meetings.
5. Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
6. If the pool is a workers' compensation pool, file a copy of the agreement with the director of the industrial commission of Arizona.

I. If the pool includes private, nonprofit educational institutions, each private, nonprofit educational institution shall post a bond, cash deposit or other comparable financial security in an amount that is equal to at least one and one-half times the amount of the private, nonprofit educational institution's annual premium to ensure payment of the school's or institution's legal liabilities and other obligations if the pool is determined to be insolvent or is otherwise found to be unable to discharge the pool's legal liabilities and other obligations pursuant to subsection N of this section.

J. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium, except pursuant to payment plans established by the board.
2. Borrow any monies from the group or in the name of the group except in the ordinary course of business.

K. In addition to the requirements of section 11-952, a contract or agreement made



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pursuant to this section shall contain the following:

1. A provision for a system or program of loss control.
2. A provision for termination of membership, including either:
 - (a) Cancellation of individual members of the pool by the pool.
 - (b) Election by an individual member of the pool to terminate its participation.
3. A provision requiring the pool to pay all claims for which each member incurs liability during each member's period of membership.
4. A provision stating that each member is not relieved of its liability incurred during the member's period of membership except through the payment of losses by the pool or by the member.
5. A provision for the maintenance of claim reserves equal to known incurred losses and an estimate of incurred but not reported claims.
6. A provision for a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled or paid.
7. A provision that the pool may establish offices where necessary in this state and employ necessary staff to carry out the purposes of the pool.
8. A provision that the pool may retain legal counsel, actuaries, auditors, engineers, private consultants and advisors.
9. A provision that the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers.
10. A provision that the pool may purchase, lease or rent real and personal property it deems necessary.
11. A provision that the pool may enter into financial services agreements with banks and other financial institutions, that it may issue checks in its own name and that it may invest its monies in equity securities, mutual funds and investment funds registered with the United States securities and exchange commission, debt obligations and any eligible investment allowed by section 35-323.
- L. A pool or a terminating member shall provide at least ninety days' written notice of the termination or cancellation. A workers' compensation pool shall notify the industrial commission of Arizona of the termination or cancellation of a member thirty days before the termination or cancellation of the member.



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M. The pool shall be audited annually at the expense of the pool by a certified public accountant, with a copy of the report submitted to the governing body or chief executive officer of each member of the pool and to the director of the department of insurance and financial institutions. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the claim reserves of the pool, including an estimate of the incurred but not reported claims. The department of insurance and financial institutions shall examine each public agency pool once every five years. The director of the department of insurance and financial institutions may examine a public agency pool sooner than five years from the preceding examination if the director has reason to believe that the pool is insolvent. The costs of any examination shall be paid by the pool subject to the examination.

N. If, as a result of the annual audit or an examination by the director of the department of insurance and financial institutions, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the director of the department of insurance and financial institutions shall notify the administrator and the board of trustees of the pool of the deficiency and the director's list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within sixty days after the date of the notice, the director shall notify the chief executive officer or the governing bodies, if any, of the members of the pool, the governor, the president of the senate and the speaker of the house of representatives that the pool has failed to comply with the recommendations of the director.

O. If a pool is determined to be insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations, each agreement or contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's annual contribution in order to satisfy the amount of deficiency. The assessment shall not exceed the amount of each member's annual contribution to the pool.

P. A pool established pursuant to this section may make available programs providing for insurance coverages described in subsections A, B and C of this section to those charter schools governed by section 15-183, subsection M and, except for a workers' compensation pool, to private, nonprofit educational institutions.

Q. In addition to the authority set forth in this title, a pool established pursuant to this section may invest public monies on behalf of pool members, but any such



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investments shall be limited to those allowed by section 35-323, except as provided in section 15-1225, subsection G. A pool established pursuant to this section may not invest monies that are required by law to be deposited with a county treasurer.

R. A pool established pursuant to this section, by the adoption of a resolution of continuing effect, may authorize and request the state treasurer to invest funds for the pool pursuant to section 35-326.

S. A pool established pursuant to this section may offer services on behalf of pool participants that participate in the unemployment insurance program administered by the department of economic security, including the option to make payments in lieu of contributions as allowed by sections 23-750 and 23-751. The pool is deemed an agent of the pool participants as employers for the purposes of title 23, chapter 4.

T. For the purposes of this section, "health benefits plan" means a hospital or medical service corporation policy or certificate, a health care services corporation contract, a multiple employer welfare arrangement or any other arrangement under which health and medical benefits and services are provided to two or more persons.

11-952.02. 11-952.02. Separate legal entities; joint exercise of powers

A. If public agencies identified in subsection B of this section form a separate legal entity pursuant to section 11-952, the entity has the common powers specified in the agreement and may exercise them in a manner or according to the method provided in the agreement. Notwithstanding title 38, an officer or elected member of the governing body of a party to the agreement may also act in the capacity of a member of the governing body of the separate legal entity. In its own name and subject to the provisions of the agreement, the separate legal entity, subject to existing applicable law, may:

1. Make and enter into contracts, including contracts, leases or other transactions with one or more of the parties to the agreement forming the separate legal entity.
2. Employ agents and employees.
3. Acquire, hold or dispose of property.
4. Acquire, construct, manage, maintain and operate buildings, works, infrastructure and improvements.



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5. Incur debts, liabilities and obligations.

6. Sue and be sued.

B. Cities, towns, counties and special taxing districts established pursuant to title 48, chapters 11, 12, 17, 18, 19 and 22 and any Indian tribe may form a separate legal entity pursuant to section 11-952 for the purposes of this subsection. The intergovernmental agreement must state the intent to form a separate legal entity pursuant to this subsection. The governing body of a separate legal entity formed pursuant to this subsection shall be composed of officials elected to one or more of the governing bodies of the public agencies that are parties to the agreement, or their designees. A separate legal entity identified pursuant to this subsection:

1. Is a political subdivision of this state having:

(a) The governmental and proprietary powers that are common to the contracting parties specified in the agreement, including, if applicable, the power to make voluntary contributions in lieu of taxes and those powers provided for in section 11-952 and this section.

(b) The rights and immunities of the parties that are granted by the constitution and statutes of this state, including immunity of its property from taxation.

2. May separately contract for an undertaking with any two or more of the parties or other public agencies or other entities. Limitations on the exercise of common powers shall be applicable only to the parties to the agreement participating in the undertaking.

3. In addition to other powers provided for in the agreement and whether or not one or more parties to the agreement do not have bonding authority for the undertaking, by a vote of its governing body, may issue revenue bonds, or incur obligations payable from the entity's revenues, to pay the costs and expenses of acquiring or constructing any structures, facilities or equipment necessary to effectuate the purposes of the agreement subject to the following conditions and requirements:

(a) The revenue bonds are payable solely from the revenues of the undertaking for which they were issued and are not payable from any revenues, taxes or assessments paid to, or to be levied or collected by, the entity or the public agencies that are parties to the agreement that forms the entity.

(b) The bonds and the income on the bonds are at all times free from taxation by this state or any political subdivision of this state.



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(c) The entity may pledge to the payment of its bonds all revenues it has or will receive from the sales of goods or services of the undertaking. Any pledge made to secure the bonds is valid and binding from the time the pledge is made. The monies pledged and received by the entity to be placed in the fund established for the purpose of securing and paying the bonds are immediately subject to the lien on or the pledge of the monies without any future physical delivery, any recording of any instrument or any further act. Any lien or pledge is valid and binding against all parties who have claims of any kind in tort, contract or otherwise against the entity or the public agencies that formed the entity regardless of whether the claimants have notice of the pledge. The official resolution or trust indenture or any instrument by which the pledge is created when placed in the entity's official records is notice to all concerned of the creation of the pledge, and those documents need not be recorded in any other place to perfect the pledge.

(d) Subject to any registration requirements, bonds issued by the entity under this paragraph are fully negotiable within the meaning and for all purposes of the uniform commercial code regardless of whether the bonds actually constitute negotiable instruments under the uniform commercial code.

(e) The bonds do not constitute an indebtedness of the entity, the public agencies that formed the entity or this state within the meaning of any statutory or constitutional limitation on indebtedness.

(f) The bonds may be sold at public or private sale at, above or below par as determined by the governing body of the entity.

(g) The treasurer of any public agency forming the entity may act as the entity's fiscal agent or the entity may appoint any commercial bank doing business in this state to hold, deposit and invest the entity's monies according to any resolution or other document authorizing the issuance of the bonds.

(h) Title 35, chapter 3, articles 5 and 7 apply to bonds issued pursuant to this paragraph.

(i) Bonds issued pursuant to this paragraph shall be issued only after consultation with the state certification board established by section 48-101.

4. May engage in electric generation and transmission activities but may not engage in electric distribution activities.

5. Shall not be deemed a public power entity pursuant to title 30 by virtue of any undertaking or other contract.



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	<p>C. For the purposes of subsection B of this section, "undertaking":</p> <p>1. Means one or more of the following:</p> <p>(a) Purchasing, constructing, leasing or acquiring any real or personal property, works or facilities that the public agencies that formed the entity are authorized by law to purchase, construct, lease or otherwise acquire.</p> <p>(b) Improving, reconstructing, extending or adding to any real or personal property, works or facilities owned or operated by the entity.</p> <p>(c) Any program of development involving real or personal property, works or facilities that the entity is authorized by law to purchase, construct, lease or otherwise acquire or the improvement, reconstruction, extension or addition to the program.</p> <p>(d) Providing utility services, purchasing, constructing, leasing or acquiring, or the extension or addition of, works or facilities designed to serve areas or territories already being served by any of the parties to the agreement.</p> <p>2. Does not include the acquisition by eminent domain of existing works or facilities of a political subdivision or public service corporation.</p> <p>D. An entity formed pursuant to this section is subject to:</p> <p>1. Title 40, chapter 2, article 6.2.</p> <p>2. Title 48, chapter 1, article 8 with regard to any property owned by the entity.</p>	
11-952.	<p>11-952. <u>Intergovernmental agreements and contracts</u></p> <p>A. If authorized by their legislative or other governing bodies, two or more public agencies or public procurement units by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action or may form a separate legal entity, including a nonprofit corporation, to contract for or perform some or all of the services specified in the contract or agreement or exercise those powers jointly held by the contracting parties.</p> <p>B. Any such contract or agreement shall specify the following:</p> <p>1. Its duration.</p> <p>2. Its purpose or purposes.</p> <p>3. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for the undertaking.</p>	



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4. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property on such partial or complete termination.

5. If a separate legal entity is formed pursuant to subsection A, the precise organization, composition, title and nature of the entity.

6. Any other necessary and proper matters.

C. No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed on it by law.

D. Except as provided in subsection E, every agreement or contract involving any public agency or public procurement unit of this state made pursuant to this article, before its execution, shall be submitted to the attorney for each such public agency or public procurement unit, who shall determine whether the agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

E. A federal department or agency or public agency of another state that is a party to an agreement or contract made pursuant to this article is not required to submit the agreement or contract to the attorney for the department or agency unless required under federal law or the law of the other state.

F. Appropriate action by ordinance or resolution or otherwise pursuant to the laws applicable to the governing bodies of the participating agencies approving or extending the duration of the agreement or contract shall be necessary before any such agreement, contract or extension may be filed or become effective.

G. An agreement or contract may be extended as many times as is desirable, but each extension may not exceed the duration of the previous agreement.

H. Payment for services under this section shall not be made unless pursuant to a fully approved written contract.

I. A person who authorizes payment of any monies in violation of this section is liable for the monies paid plus twenty percent of such amount and legal interest from the date of payment.

J. Notwithstanding any other provision of law, public agencies may enter into a contract or agreement pursuant to this section with the superior court, justice courts and municipal courts for related services and facilities of such courts for a term not to exceed ten years, with the approval of such contract or agreement by the presiding judge of the superior court in the county in which the court or courts



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	that provide the facilities or services are located.
11-953.	<p>11-953. <u>Appropriations</u></p> <p>Any public agency entering into an agreement or contract pursuant to this article may appropriate funds and may sell, lease, give or otherwise supply for the benefit of the joint or cooperative undertaking such services or personnel as may be within its legal power to furnish.</p>
11-954.	<p>11-954. <u>Limitation of powers</u></p> <p>Except for the right of joint exercise of powers granted in this article, the provisions of this article shall be cumulative and supplemental and nothing contained in this article shall be so construed as to authorize any public agency to exercise any power or engage in any business or enterprise that such public agency is not authorized to exercise or engage in pursuant to other provisions of law.</p>
11-955.	<p>11-955. <u>Joint powers public safety committee; powers and duties</u></p> <p>A. The chief law enforcement officer or the officer's designee from two or more cities, towns, Indian tribes or counties in this state may establish a joint powers public safety committee for the purpose of facilitating the sharing of criminal justice information between law enforcement agencies as authorized by section 41-1750. The chief law enforcement officer or the officer's designee from each city, town, county or Indian tribe shall establish a governing board.</p> <p>B. The governing board shall:</p> <ol style="list-style-type: none"> 1. Establish rules related to the governance of the committee. 2. Establish rules related to the security, privacy, confidentiality and dissemination of information maintained by the committee pursuant to state and federal law. 3. Elect a budget officer from among its members to fulfill any administrative duties prescribed by the committee. 4. Annually adopt a budget for the following fiscal year. <p>C. The committee may accept and spend public monies and private grants, gifts and contributions.</p> <p>D. Membership on the committee does not constitute the holding of an office, and committee members are not required to take and file oaths of office before serving on the committee. No committee member may be disqualified from holding any public office or employment nor may the member forfeit any office or employment</p>



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by reason of the member's appointment, notwithstanding the provision of any general, special or local law, ordinance or city charter.

11-1101.

11-1101. Development agreements

A. A county, by resolution or ordinance, may enter into development agreements relating to property located outside the incorporated area of a city or town.

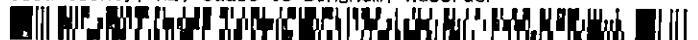
B. The development agreement shall be between the county and a landowner or any other person having an interest in real property and may specify or otherwise relate to any of the following:

1. The duration of the agreement.
2. The permitted uses of property subject to the agreement.
3. The density and intensity of uses and the maximum height and size of proposed buildings within the property.
4. Provisions for reservation or dedication of land for public purposes and provisions to protect environmentally sensitive lands.
5. Provisions for preservation and restoration of historic structures.
6. The phasing or time of construction or development on the property.
7. Conditions, terms, restrictions, financing and requirements for public infrastructure and subsequent reimbursements over time.
8. Conditions, terms, restrictions and requirements relating to the county's intent to form a special taxing district pursuant to title 48.
9. Conditions of sewer services.
10. Any other matters relating to the development of the property.

C. A development agreement shall be consistent with the county comprehensive plan adopted pursuant to chapter 6, article 1 of this title and applies to the property on the date the development agreement is executed.

D. A development agreement may be amended, or cancelled in whole or in part, by mutual consent of the parties to the development agreement or by their successors in interest or assigns.

E. Within ten days after a development agreement is executed, the county shall record a copy of the agreement with the county recorder, and the recordation constitutes notice of the development agreement to all persons. The burdens of the



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	<p>development agreement are binding on, and the benefits of the development agreement inure to, the parties to the agreement and to all of their successors in interest and assigns.</p> <p>F. Section 32-2181, subsection I does not apply to development agreements under this section.</p> <p>G. Notwithstanding any other law, a county may provide by resolution or ordinance for public safety purposes, and with the written consent of an owner of property that has entered into a development agreement pursuant to this section, for the application and enforcement of speed limits, vehicle weight restrictions or other safety measures on a private road that is located in any development outside the corporate boundaries of a city or town and that is open to and used by the public. The county may require payment from the property owner of the actual cost of signs for speed limits or other restrictions applicable on the private road before their installation.</p>
11-1201.	<p>11-1201. <u>Definitions</u></p> <p>In this chapter, unless the context otherwise requires:</p> <ol style="list-style-type: none">1. "Landowner" means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns and personal representative of the owner, or a representative authorized by a landowner to submit to a county a development application for a property for approval.2. "Property" means all real property subject to zoning regulations and restrictions by a county.3. "Protected development right" means the right to undertake and complete the development and use of property under the terms and conditions of a protected development right plan established pursuant to this article, without compliance with subsequent changes in zoning regulations and development standards, except as provided by section 11-1204.4. "Protected development right plan" means a plan submitted by a landowner to a county, which, if approved by the board of supervisors of the county and if identified as a protected development right plan at the time it is submitted, grants the landowner, for a specified period of time, a protected development right to undertake and complete the development as shown on the plan. The protected development right plan shall be submitted to a county for site development approval. A protected development right plan for a phased development shall be in the form of a plan for a master plan development which may include a plan for a



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planned unit development, planned community development or district, planned residential development or district or planned area development or district if such land use category or district is recognized and provided for in the zoning ordinance of the county. A protected development right plan for a nonphased development must provide the final site development approval needed for issuance of a building permit.

11-1601.

11-1601. Definitions

In this article, unless the context otherwise requires:

1. "Design-build" means a construction project delivery system in which the design and construction aspects are contracted for with a single entity known as the design-builder or design-build contractor, and in which the system is used to minimize the project risk for an owner and to reduce the delivery schedule by overlapping the design phase and construction phase of a project entity.
2. "Fire and life safety inspection" means an inspection of a regulated person or facility conducted to ensure fire safety compliance.
3. "Food and swimming pool inspection" means an inspection of a regulated person conducted to ensure the safety of food services, swimming pools and other bathing places.
4. "License" includes the whole or part of any county permit, certificate, approval, registration, charter or similar form of permission required by law.
5. "Licensing" includes the county process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
6. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, or a public or private organization of any character.
7. "Request for corrections" means a request for technical or clarifying corrections from an applicant who has submitted an administratively complete application for a license.
8. "Substantive policy statement" means a written expression that is only advisory and that informs the general public of a county's current approach to, or opinion of, the requirements of the ordinances or regulations, including, if appropriate, the county's current practice, procedure or method of action based on that approach or opinion. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the county and that do not



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	<p>impose additional requirements or penalties on regulated parties or confidential information.</p> <p>9. "Working day" means a twenty-four hour period excluding weekends and legal holidays.</p>	
11-1604.	<p>11-1604. <u>Prohibited acts by county and employees; enforcement; notice</u></p> <p>A. A county shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, ordinance or delegation agreement. A general grant of authority does not constitute a basis for imposing a licensing requirement or condition unless the authority specifically authorizes the requirement or condition.</p> <p>B. Unless specifically authorized, a county shall avoid duplication of other laws that do not enhance regulatory clarity and shall avoid dual permitting to the maximum extent practicable.</p> <p>C. This section does not prohibit county flexibility to issue licenses or adopt ordinances or codes.</p> <p>D. A county shall not request or initiate discussions with a person about waiving that person's rights.</p> <p>E. This section may be enforced in a private civil action and relief may be awarded against a county. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against a county for a violation of this section.</p> <p>F. A county employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the county's adopted personnel policy.</p> <p>G. This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.</p> <p>H. A county shall prominently print the provisions of subsections A, B, C, D, E, F and G of this section on all license applications.</p> <p>I. The licensing application may be in either print or electronic format.</p>	
11-1606.	<p>11-1606. <u>License application process</u></p> <p>A county that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:</p>	



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	<ol style="list-style-type: none">1. A list of all of the steps the applicant is required to take in order to obtain the license.2. The applicable licensing time frames.3. The name and telephone number of a county contact person who can answer questions or provide assistance throughout the application process.4. The website address and any other information, if applicable, to allow the regulated person to use electronic communication with the county.5. Notice that an applicant may receive a clarification from the county of its interpretation or application of a statute, ordinance, regulation, delegation agreement or authorized substantive policy statement as provided in section 11-1609.
11-1607	<p>11-1607. <u>Directory of documents</u></p> <p>The county shall publish, or prominently place on the county website, at least annually a directory summarizing the subject matter of all currently applicable ordinances, regulations, rules, and substantive policy statements. The county shall keep copies of this directory and all substantive policy statements at one location. The directory, ordinances, regulations, rules, substantive policy statements and any materials incorporated by reference in these documents shall be open to public inspection at the office of the county or the county website.</p>
11-1608.	<p>11-1608. <u>Complaints; procedures</u></p> <p>A. The board of supervisors shall establish a procedure for receiving complaints from an adversely affected person concerning ordinances, rules, regulations, substantive policy statements or county practices alleged to violate this article or section 11-251.18.</p> <p>B. The board of supervisors may require the complaint to be made in writing and to include the following information:</p> <ol style="list-style-type: none">1. The name and address of the adversely affected person making the complaint.2. The ordinance, rule, regulation, substantive policy statement or county practice alleged to violate this article or section 11-251.18.3. Any facts relevant to, and the legal basis for, the complaint. <p>C. Procedures adopted by the board of supervisors pursuant to this section shall include reasonable time frames to address complaints and shall provide a process</p>



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	for appeal.
11-1611.	<p><u>11-1611. Limitation on regulatory actions; health, safety and welfare; goods and services; definitions</u></p> <p>A. Unless authorized by federal, state or local law a county may not take any action that materially increases the regulatory burdens on a business unless there is a threat to the health, safety and welfare of the public that has not been addressed by legislation or industry regulation within the proposed regulated field.</p> <p>B. Unless authorized by federal, state or local law, a county may not apply a regulation to a qualified marketplace platform if the purpose of that regulation is to regulate a business that provides goods or services directly to the customer.</p> <p>C. For the purposes of this section:</p> <p>1. "Qualified marketplace contractor" means any person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor or other entity, that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform's digital platform to provide goods or services to third-party individuals or entities seeking those services.</p> <p>2. "Qualified marketplace platform" means an organization, including a corporation, limited liability company, partnership, sole proprietor or any other entity, that operates a digital platform that facilitates the provision of goods or services by qualified marketplace contractors to third-party individuals or entities seeking those goods or services.</p>
11-1612.	<p><u>11-1612. Regulation of occupation, trade or profession; notice; hearing; exemptions; definition</u></p> <p>A. A county may not impose an occupational licensing requirement on any occupation, trade or profession unless the new occupational licensing requirement is necessary to protect the health, safety or welfare of the public.</p> <p>B. Beginning August 3, 2018, a county may not impose an occupational licensing requirement on any occupation, trade or profession on which the county has not previously imposed a fee, requirement or other regulation unless the county adopts the occupational licensing requirement pursuant to the procedures prescribed in subsection C of this section and demonstrates that the new occupational licensing requirement is necessary to protect the health, safety or welfare of the public.</p> <p>C. Before adopting an occupational licensing requirement on any occupation, trade</p>



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or profession, a county shall hold at least one public hearing on the proposed occupational licensing requirement. The county shall publish notice of the time and place of the public hearing on the occupational licensing requirement, including a general explanation of the matter to be considered, as provided by section 39-204. In cases of occupational licensing requirements enacted on behalf of a private person, the private person shall pay the expense of publication and may designate the newspaper.

D. If the county adopts an occupational licensing requirement pursuant to this section, the county shall determine and establish administrative rules and procedures for the application and enforcement of the occupational licensing requirement. The county may:

1. Assign or delegate administrative powers and duties to any agency, as necessary.
2. Create administrative agencies.
3. Provide for officials and for monies for the compensation of officers, employees and agencies and for the support of their work.

E. A county that does not adopt an occupational licensing requirement is not prohibited from adopting an occupational licensing requirement in the future if the county follows the procedures in subsection C of this section when reconsidering the requirement.

F. An occupational licensing requirement adopted pursuant to this section shall terminate five years after its adoption unless the county continues the occupational licensing requirement after following the procedures prescribed in subsection C of this section at least three months before the occupational licensing requirement expires.

G. An occupational licensing requirement that is in effect on August 3, 2018 shall terminate August 3, 2023 unless the county continues the occupational licensing requirement after following the procedures prescribed in subsection C of this section at least three months before the occupational licensing requirement expires and demonstrates the occupational licensing requirement is necessary to protect the health, safety or welfare of the public.

H. This section does not apply to an occupational licensing requirement on an individual who works or seeks employment in a lawful occupation, trade or profession at:

1. A structured sober living home as defined in section 11-269.18.



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2. An establishment that provides an adult service as defined in section 11-811.

3. An adult oriented business as defined in section 11-811.

4. A public airport under title 28, chapter 25.

I. For the purposes of this section, "occupational licensing requirement":

1. Means:

(a) A rule, regulation, practice or policy that is adopted by a county and that allows an individual to use an occupational title or work in a lawful occupation, trade or profession or a regulatory requirement that prevents an individual from using an occupational title or working in a lawful occupation, trade or profession.

(b) A fee or tax that a county imposes on an individual to use an occupational title or work in a lawful occupation, trade or profession.

2. Does not include:

(a) A business license, facility license, building permit or zoning and land use regulation.

(b) Any license or regulation that is required by federal law.



Proof-of-Claim – G. 7 / 7

:Arizona-Revised-Statute- proofs:

ARS Title 47 – Uniform commercial code provision

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12/02/2021 10:19:01 AM Receipt #: 21-19425

Rec Fee: \$30.00 Darrell Hill

Gila County, Az. Sadie Jo Bingham, Recorder



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

27 / 28

Arizona- State- Title 47 - Uniform Commercial Code

Chapter 1

GENERAL PROVISIONS

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Arizona- State- Title 47 - Uniform Commercial Code sections

47-1202. 47-1202. Notice; knowledge

A. Subject to subsection F, a person has "notice" of a fact if the person:

1. Has actual knowledge of it;
2. Has received a notice or notification of it; or
3. From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

B. "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

C. "Discover", "learn" or words of similar import refer to knowledge rather than to reason to know.

D. A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

E. Subject to subsection F, a person "receives" a notice or notification when:

1. It comes to that person's attention; or
2. It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

F. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

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Gila County, Az, Sadie Jo Bingham, Recorder



Arizona- State- Title 47 - Uniform Commercial Code sections

47-1305. Remedies to be liberally administered

A. The remedies provided by this title must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this title or by other rule of law.

B. Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

47-2701 47-2701. Remedies for breach of collateral contracts not impaired

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

47-1202. 47-1202. Notice; knowledge

A. Subject to subsection F, a person has "notice" of a fact if the person:

1. Has actual knowledge of it;
2. Has received a notice or notification of it; or
3. From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

B. "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

C. "Discover", "learn" or words of similar import refer to knowledge rather than to reason to know.

D. A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

E. Subject to subsection F, a person "receives" a notice or notification when:

1. It comes to that person's attention; or
2. It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.



Arizona- State- Title 47 - Uniform Commercial Code sections

F. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

47-9601. 47-9601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes

A. After default, a secured party has the rights provided in this article and, except as otherwise provided in section 47-9602, those provided by agreement of the parties.

A secured party:

1. May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and
2. If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

B. A secured party in possession of collateral or control of collateral under section 47-7106, 47-9104, 47-9105, 47-9106 or 47-9107 has the rights and duties provided in section 47-9207.

C. The rights under subsections A and B of this section are cumulative and may be exercised simultaneously.

D. Except as otherwise provided in subsection G of this section and section 47-9605, after default, a debtor and an obligor have the rights provided in this article and by agreement of the parties.

E. If a secured party has reduced its claim to judgment, the lien of any levy that may be made on the collateral by virtue of an execution based on the judgment relates back to the earliest of:

Arizona- State- Title 47 - Uniform Commercial Code sections

1. The date of perfection of the security interest or agricultural lien in the collateral;
2. The date of filing a financing statement covering the collateral; or
3. Any date specified in a statute under which the agricultural lien was created.

F. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

G. Except as otherwise provided in section 47-9607, subsection C, this article imposes no duties on a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles or promissory notes.

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Proof-of-Claim – H. 1/ 1

**Constructive Notice Of The Setting Of The Setting Of
The Presumptions ~Initially: USPO CMN 7018 0360
0000 6959 2963 ~ -Presumption Set: USPO RMN RE
322 404 036 US – entry to Case No. CV 20181825-
Oldham: court-rules-agreement for the Ingold-
Pinal-2017-A.D. - covenant**

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**Rec Fee: \$30.00 Darrell Hill
Gila County, Az, Sadie Jo Bingham, Recorder**



:Procurator-Order: No further harm upon the man- Ohioan and New-Mexican, -:Hill- Executors

:Procurator-Order: 7009 1410 0000 7868 5802

28 / 28

:Beverly-Jean: Hill: beneficiary and Executor
c/o 5142 East 18th Avenue
Apache Junction, Arizona ZIP CODE EXEMPT
DMM 602.1.3.e2. Title 18 U.S.C. § 1342
602.499.8807

:man :present:

Arizona state
Pinal county

**SUPERIOR COURT OF ARIZONA
PINAL COUNTY**

PINAL COUNTY,
:Plaintiff;

Case No. CV 201801825
THE HON. BRENDA E OLDHAM

v.

**:RESPONDENT NOTICE: –
Attached: Constructive Notice Of The
Setting Of The Presumptions –
(Initially: USPS CMN 7018 0360 0000
5969 2963; rec'd:**

JAY INGOLD, also know as JAY ROY
INGOLD: subrogation of the man
beneficiary: Jay-Roy: Ingold: sui juris
:Aggrieved Party

:Respondent-

Executor;

Cross-Claimant.

v.

:Himanshu: Director, Community
Development Patel, :Paula: Code
Compliance Manager Mullenix,
:Terrilyn: Code Compliance Officer
Klucar, :James: Code Compliance
Officer Meadows, :Kent: Pinal County
Attorney Volkmer, :Craig: Deputy

County Attorney Cameron,
:John-Doe, :Jane-Doe,

:Wrong-doers.

:AFFIANT: Man :Principal

:Jay-Roy: family name: Ingold: Indianan -1962: sui juris: beneficiary and executor:
status adopted by reference. See: A of the Almighty-God-given natural rights, and
the :beneficiary- subrogee and executor of the public trust subrogation named: JAY
ROY INGOLD~ et al. derivatives created by the UNITED STATES government-
trustee, et al., et seq. – also including the PINAL/ Pinal county, STATE OF
ARIZONA/ Arizona state government-trustee. i am a literate, legal-idiot.

THE SETTING OF PRESUMPTIONS

1. Regarding: Constructive Notice Of The Setting Of Presumptions of the
meeting for the discussion of the matter and the offer; for the fact: rebutted- or un-
rebutted- presumptions variably effect the discussions on a matter by the visitors to
the meetings. Wherefore: i:man : Jay-Roy: Ingold set these known presumptions:
2. Re: presumption of the public record, i:man :Jay-Roy: Ingold rebut and reject
that a matter-at-hand is a private BAR-guild business matter. Heretofore:
'presumption of public record' is now to 'in perpetuity' set: that: this private business
matter is to be recorded in a public environment and on the public record by the

public record number (Case Number) on the OFFER: page 1 of this matter; and:

3. Re: presumption of the public service, i:man rebut and reject that a matter is ministered as a public service by the public servants. Heretofore: 'presumption of public service' is now to 'in perpetuity' set; that: any public person engaged in this private matter is deemed to be in the public service as a public servant; and:

4. Re: presumption of the public oath, i:man rebut and reject that a public servant's public service sworn oath is presumed not-superseded by some other oath. Heretofore: 'presumption of public oath' is now to 'in perpetuity' set; that: every public servant acting on the behalf of this matter is required to state all public and private sworn oaths superseding the public servant's sworn oath(s); and:

5. Re: presumption of the immunity, i:man rebut and reject that a public official's acts are immune from a personal accountability. Heretofore: 'presumption of the immunity' is now to 'in perpetuity' set; that: any person acting on a behalf of/as an agent for any nameless, faceless predilection or corporation is wholly personally liable for their actions on the behalf of that interest upon the Notice of Injury with a financial penalty¹; and:

6. Re: presumption of the summons, i:man rebut and reject that by a custom the any person visitor or attendee to the meeting is thereby and thereon by a default assumed to also accept a position under the court's jurisdiction. Heretofore:

¹ Financial penalty means: by tacit procurement: pay due now- fee schedule: one ounce U.S. gold coin in specie per the minute until the matter is resolved.



'presumption of summons' is now to 'in perpetuity' set: that, for the now, past and future occasions, the customary presumption of the jurisdiction, position, and existence of a guilt is forbidden; and:

7. Re: presumption of the custody, i:man rebut and reject that any summons or warrant-for-arrest is imbued with an authority for the treatment of the natural person as a "thing" to be detained or held in a custody by a custodian. Heretofore:

'presumption of custody' is now to 'in perpetuity' set: that man-kind is as i: man am, alive and well: not a thing to be held in a custody by a custodian or guardian; not property of the Roman-Court or Roman-Empire; and: under no circumstances may i:man be detained in any way: now, past or future; and:

8. Re: presumption of the court of the guardians, i:man rebut and reject that a visitor to a meeting is by the default a resident, ward, pauper or lunatic subject to obey the rules of the court. Heretofore: 'presumption of court of guardians' is now to 'in perpetuity' set: that: i:man :Jay-Roy: Ingold am: general guardian and executor of the matters of the trust; and:

9. Re: presumption of the court of the trustees, i:man rebut and reject that a visitor to the Roman-Court thereby and thereon accepts an office of a trustee or public servant or government employee. Heretofore: 'presumption of court of trustees' is now to 'in perpetuity' set: that: for the reason of as a visitor with an invitation to meet and to clear up a matter, the offices of a the trustee and the roles of

a public servant and government employees are rejected: absolutely no jurisdiction may be claimed. However, the need for to contribute unto the well-being of the community is acknowledged and graciously embraced; and:

10. Re: presumption of the government acting in two roles as the executor and beneficiary, i:man rebut and reject that the judge or magistrate may act in the role as the executor with the prosecutor acting in the role as the beneficiary. Heretofore: 'presumption of the government acting in two roles as executor and beneficiary' is now to 'in perpetuity' set: that i: man am the general executor, general guardian, and beneficiary and executor in all matters-at-hand pertaining to the legal person -subrogation: JAY ROY INGOLD, as well as to the flesh and blood living soul: Jay-Roy: Ingold; and:

11. Re: presumption of the agent and agency, i:man rebut and reject that i:man, as if presumed to be under a contract, express or grant authority to a judge or magistrate by the use of a certain legal term ~ as recognize, understand or comprehend -, and thereby and thereon agree to be bound to perform under the direction of a judge or magistrate. Heretofore the 'presumption of agent and agency' is now to 'in perpetuity' set: that: under no circumstance may a judge or magistrate assume the executor role; and:

12. Re: presumption of the incompetence, i:man rebut and reject that visitors at the court are, at the least, ignorant of the law, incompetent to present and/or argue

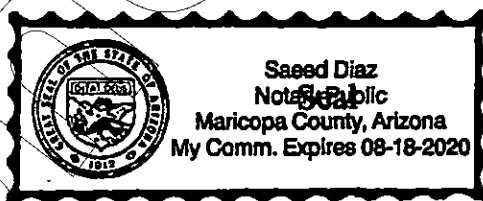
“properly”, and, therefore, the judge or magistrate as the executor has the right to arrest, detain, fine, or force a psychiatric evaluation. Heretofore: 'presumption of incompetence' is now to 'in perpetuity' set: that: i:man know the position of the executor and beneficiary; and rebuke and object to any contrary presumption. – No privilege of the deeming i:man incompetent is permitted; and:

13. Re: presumption of the guilt i:man rebut and reject that i:man am presumed guilty or to be held until a bond is guaranteed. Heretofore: 'presumption of guilt' is now to 'in perpetuity' set: that, under no circumstance may i:man be: a) presumed guilty, or b) detained; nor: c) may any financial transactions occur in the favor of the court.

Without Prejudice
JAY ROY INGOLD, subrogation

Jay-Roy Ingold, executor
Jay-Roy: Ingold, beneficiary, respondent-
Executor

Affirmed and autographed before me this 25 day: January: 2019 A.D.;
:Type- Identification: Arizona Driver License



notary

Presumptions Set: USPS RMN RE 322 404 036 US

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